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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–5539; Directorate Identifier 2015–NE–37–AD; Amendment 39–18493; AD 2016–08–16]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for all Turbomeca S.A. Arriel 2E turboshaft engines. This AD requires removing the pre-TU 193 adjusted high-pressure/low-pressure pump and metering valve assembly and replacing it with a part that is eligible for installation. This AD also requires replacing the constant delta-pressure (delta-P) diaphragm of the fuel metering valve. This AD was prompted by reports of fuel flow non-conformities found during acceptance tests of Arriel 2E hydro-mechanical metering units (HMUs). We are issuing this AD to prevent failure of the delta-P diaphragm, which could result in an uncommanded in-flight shutdown and damage to the helicopter.

DATES: This AD becomes effective May 25, 2016.

ADDRESSES: For service information identified in this AD, contact Turbomeca S.A., 40220 Tarnos, France; phone: 33 (0)5 59 74 40 00; fax: 33 (0)5 59 74 45 15. You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–5539.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–5539; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the mandatory continuing airworthiness information (MCAI), the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Kyle Gustafson, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7183; fax: 781–238–7199; email: *kyle.gustafson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to the specified products. The NPRM was published in the **Federal Register** on January 4, 2016 (81 FR 30). The NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Fuel flow non-conformities were found during reception tests of ARRIEL 2E Hydraulic Mechanical Metering Unit (HMU). Investigation and instrumented tests revealed instabilities on the additional check valve. These instabilities lead to hydraulic pulses. All HMU installed on ARRIEL 2E and 2N engines could present these instabilities.
>
> This condition, if not corrected, could lead to life reduction of the delta pressure valve diaphragm, and consequently, an uncommanded engine power increase, or an uncommanded in flight shutdown, possibly resulting in an emergency landing.

You may obtain further information by examining the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–5539.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (81 FR 30, January 4, 2016).

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting this AD as proposed.

Related Service Information

Turbomeca S.A. has issued Mandatory Service Bulletin (MSB) No. 292 73 2193, Version A, dated July 16, 2015. The MSB describes procedures for incorporating modification TU 193 and replacing the constant delta-P diaphragm of the fuel metering valve.

Costs of Compliance

We estimate that this AD affects 12 engines installed on helicopters of U.S. registry. We also estimate that it will take about 2 hours per engine to comply with this AD. The average labor rate is $85 per hour. Required parts cost about $13,400 per engine. Based on these figures, we estimate the cost of this AD on U.S. operators to be $162,840.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2016–08–16 Turbomeca S.A.: Amendment 39–18493; Docket No. FAA–2015–5539; Directorate Identifier 2015–NE–37–AD.

(a) Effective Date

This AD becomes effective May 25, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Turbomeca S.A. Arriel 2E turboshaft engines that have a pre-TU 193 adjusted high-pressure/low-pressure (HP/LP) pump and metering valve assembly, installed.

(d) Reason

This AD was prompted by reports of fuel flow non-conformities found during acceptance tests of Arriel 2E hydro-mechanical metering units. We are issuing this AD to prevent failure of the constant delta-pressure (delta-P) diaphragm of the fuel metering valve, which could result in an uncommanded in-flight shutdown and damage to the helicopter.

(e) Actions and Compliance

Comply with this AD within the compliance times specified, unless already done.

(1) Prior to exceeding 880 operating hours since new on the adjusted HP/LP pump and metering valve assembly or within 50 operating hours after the effective date of this AD, whichever occurs later:

(i) Remove from service the adjusted HP/LP pump and metering valve assembly and replace with a part that is eligible for installation, and

(ii) replace the constant delta-P diaphragm of the fuel metering valve.

(2) Reserved.

(f) Installation Prohibition

After the effective date of this AD, do not install into any engine any pre-TU 193 adjusted HP/LP pump and metering valve assembly, nor install onto any helicopter any engine that has a pre-TU 193 adjusted HP/LP pump and metering valve assembly.

(g) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: *ANE-AD-AMOC@faa.gov.*

(h) Related Information

(1) For more information about this AD, contact Kyle Gustafson, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7183; fax: 781–238–7199; email: *kyle.gustafson@faa.gov.*

(2) Refer to MCAI European Aviation Safety Agency AD 2015–0213, dated October 16, 2015, for more information. You may examine the MCAI in the AD docket on the Internet at *https://www.regulations.gov/#!documentDetail;D=FAA-2015-5539-0002.*

(3) Turbomeca S.A. Mandatory Service Bulletin No. 292 73 2193, Version A, dated July 16, 2015, can be obtained from Turbomeca S.A., using the contact information in paragraph (h)(4) of this AD.

(4) For service information identified in this AD, contact Turbomeca S.A., 40220 Tarnos, France; phone: 33 (0)5 59 74 40 00; fax: 33 (0)5 59 74 45 15.

(5) You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

(i) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on April 12, 2016.

Ann C. Mollica,

Acting Manager, Engine & Propeller Directorate, Aircraft Certification Service.

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DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2015–0005; T.D. TTB–136; Ref: Notice Nos. 149 & 149A]

RIN 1513–AC14

Establishment of the Lewis-Clark Valley Viticultural Area and Realignment of the Columbia Valley Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) establishes the approximately 306,650-acre Lewis-Clark Valley viticultural area in portions of Nez Perce, Lewis, Clearwater, and Latah Counties in Idaho and Asotin, Garfield, and Whitman Counties in Washington. TTB is also modifying the boundary of the existing Columbia Valley viticultural area to eliminate a partial overlap with the Lewis-Clark Valley viticultural area. The boundary modification will decrease the size of the approximately 11,370,320-acre Columbia Valley viticultural area by approximately 57,020 acres. The Lewis-Clark Valley viticultural area is not located within and does not overlap any other viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase.

DATES: This final rule is effective May 20, 2016.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01 (dated December 10, 2013, superseding Treasury Order 120–01 (Revised), "Alcohol and Tobacco Tax and Trade Bureau," dated January 24, 2003), to the TTB Administrator to perform the functions and duties in the administration and enforcement of these laws.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features, as described in part 9 of the regulations, and a name and a delineated boundary, as established in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and provides that any interested party may petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions for the establishment or modification of AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA boundary;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

Lewis-Clark Valley Petition

TTB received a petition from Dr. Alan Busacca, a licensed geologist and founder of Vinitas Consultants, LLC, on behalf of the Palouse-Lewis Clark Valley Wine Alliance and the Clearwater Economic Development Association. The petition proposed to establish the Lewis-Clark Valley AVA and modify the boundary of the existing Columbia Valley AVA (27 CFR 9.74). There are 3 wineries and approximately 16 commercially producing vineyards covering more than 81 acres within the proposed AVA. According to the petition, an additional 50 acres of grapes are expected to be planted within the next few years.

The distinguishing features of the proposed Lewis-Clark AVA include its topography, climate, native vegetation, and soils. The proposed AVA is located at the confluence of the Snake and Clearwater Rivers. The topography of the proposed AVA consists primarily of deep, V-notched canyons, low plateaus, and bench lands formed by the two rivers. Almost none of the proposed AVA consists of broad floodplains typically associated with valley floors, which are susceptible to cold-air pooling that can damage new growth and delay fruit maturation. Elevations within the proposed AVA are below 600 meters (approximately 1,970 feet). According to the petition, within the region of proposed AVA, elevations above 600 meters are generally too cold to support reliable ripening of the varietals of *Vitis vinifera* (*V. vinifera*) grapes that are grown within the proposed AVA, and winter freezes can be hard enough to kill dormant vines. By contrast, the regions surrounding the proposed Lewis-Clark Valley AVA to the east, south, southwest, and west are steep, rugged mountains with elevations ranging from approximately 2,000 feet to over 6,300 feet. To the north of the proposed AVA are the gently rolling hills of the Palouse high prairie, where the elevations can reach approximately 2,800 feet.

Due to its lower elevations, the climate of the proposed Lewis-Clark Valley is generally warmer than that of the surrounding regions and is suitable for growing a variety of grape varietals, including Cabernet Sauvignon, Chardonnay, Merlot, and Cabernet Franc. The warm temperatures of the proposed AVA have earned the region the nickname "banana belt of the Pacific Northwest." Growing degree day (GDD) accumulations within the proposed AVA range from 2,613 to 3,036. GDD accumulations in the surrounding regions are all below 2,000, which is too low for the consistent, successful ripening of most varietals of *V. vinifera* grapes.

Low shrubs and perennial grasses that have deep masses of fine roots constitute the native vegetation of the proposed Lewis-Clark Valley AVA. The decomposition of these native grasses and their root mats has contributed to the formation of nutrient-rich soils within the proposed AVA. The soils are high in organic materials that promote healthy vine growth. The majority of these soils are classified as Mollisols soils. The Palouse region to the north of the proposed AVA has similar native grasses, but most of the land is used for growing wheat, which is better suited to the cooler climate of the Palouse. To the east, south, and west of the proposed AVA, conifer trees comprise most of the native vegetation. The understories of these forested regions are covered with pine needle litter instead of perennial grasses. The pine needle litter remains on the surface, so the organic material released by the decomposition of the needles does not mix as deeply into the soil as the material released by decaying grass root mats. As a result, the soils of forested regions are not as high in organic material and nutrients as the soils within the proposed AVA. Additionally, the soils to the east, south, and west of the proposed AVA are classified as Andisols soils, which are comprised primarily of ash and other volcanic materials and contain only small amounts of organic material.

Notice of Proposed Rulemaking and Comments Received

TTB published Notice No. 149 in the **Federal Register** on April 14, 2015 (80 FR 19902), proposing to establish the Lewis-Clark Valley AVA. In the document, TTB summarized the evidence from the petition regarding the name, boundary, and distinguishing features for the proposed AVA. The document also compared the distinguishing features of the proposed AVA to the surrounding areas. In Notice No. 149, TTB solicited comments on the accuracy of the name, boundary, and other required information submitted in support of the petition. In addition, TTB solicited comments on whether the information provided in the petition sufficiently demonstrated that the distinguishing features of the portion of the proposed Lewis-Clark Valley AVA that would overlap the established Columbia Valley AVA are so different from those of the established AVA that the overlapping region should be removed from the established AVA and placed entirely within the proposed AVA. The comment period originally closed on June 15, 2015.

In response to Notice No. 149, TTB received 37 comments during the original comment period, 36 of which unequivocally support the establishment of the proposed Lewis-Clark AVA, with several commenters citing its distinct topography, climate, and soils. Many of the commenters also stated their belief that the proposed AVA would encourage economic growth in the Lewiston-Clarkston region. Commenters included local vineyard and winery owners; a member of the Lewiston, Idaho City Council; Valley Vision, a local non-profit economic development corporation; representatives of the Clearwater Economic Development Association; representatives of the Port of Lewiston and the Port of Clarkston, Washington; the Idaho Wine Commission; the Dean for Community Programs at Lewis-Clark State College; the Nez Perce County, Idaho Planning and Building Department; and a licensed geologist/ hydrologist.

Eleven of the supporting comments also specifically support removing the overlapping region of the proposed Lewis-Clark Valley AVA from the Columbia Valley AVA. However, only four of these comments (comments 13, 20, 21, and 36) offer specific reasons for supporting the boundary modification. One commenter (comment 13) reiterated the petition's claim that the different geology of the overlapping region created a topography of bench lands, low plateaus, and steep canyon sides that are distinct from the plains of the Columbia Valley AVA. Another commenter (comment 20) stated that the climate of the overlapping region and the proposed Lewis-Clark Valley AVA are both "more distinctly affected by the interior mountains on the eastern border of the proposed AVA and the soils are distinctly affected by the decomposed granites and basalt substrates that were deposited through centuries of alluvial outwash. . . ." The third commenter (comment 21) stated that the overlapping region and the proposed AVA were "not ravaged by the Missoula Floods as was most of the Columbia Valley." The fourth commenter (comment 36) stated that his experience growing grapes in the proposed AVA supports the petition's claims that the climate of the proposed AVA has a longer growing season and different soils than the Columbia Valley AVA. The commenter also agreed with the petition that the canyons of the proposed AVA and the overlapping region are "in stark contrast to the shallow and wide basins created by the Columbia River in the Columbia Valley AVA."

Proposed AVA Boundary Expansion

While supporting establishment of the proposed Lewis-Clark AVA, one commenter proposed expanding its boundary to include an area of higher elevations to the northeast of the proposed AVA. This acreage is referred to in this section of the final rule as the "proposed expansion area" for the proposed Lewis-Clark Valley AVA. The commenter states he plans to develop a vineyard within the proposed expansion area at approximately 2,800 feet in elevation (see comment 34). The proposed Lewis-Clark Valley AVA is limited to elevations of 600 meters (approximately 1,960 feet) and under. Arguing that viticulture is feasible at the higher elevations of the Lewis-Clark Valley, the commenter provided climate data from a station within the proposed expansion area for 2012–2014. While noting that the GDD accumulations within his proposed expansion area are lower than those within the proposed AVA, the commenter stated they are higher than those found in Moscow, Idaho, which is located to the north of the proposed AVA. Climate data from Moscow was included in the proposed Lewis-Clark Valley AVA petition. The commenter believes, therefore, that his data shows the climate in his proposed expansion area is more similar to the climate within the proposed Lewis-Clark AVA than the climate of the nearby regions north of the proposed AVA, including Moscow, Idaho.

The commenter also claimed that precipitation amounts within the proposed expansion area are similar to those within the proposed Lewis-Clark Valley AVA, although he did not provide any non-anecdotal evidence to support his claim. Finally, the commenter states that although the soils in the proposed expansion area are Andisols soils, "there is no reason to consider this [soil type] any less suitable for viticulture" than the Mollisols soils of the proposed AVA.

TTB has reviewed the commenter's claims and supporting evidence and has decided not to include the proposed expansion area within the proposed AVA for two reasons. First, TTB notes that the commenter states that the property owner is planning to plant a vineyard, which does not indicate that viticulture exists within the proposed expansion area. TTB regulations require that viticulture be present within an area proposed to be added to an AVA. See 27 CFR 9.12(c). Therefore, the proposed expansion area cannot be added to the proposed Lewis-Clark Valley AVA because no evidence has been provided to show that viticulture currently takes place in the proposed expansion area.

Secondly, TTB has determined that the proposed expansion area does not share the same climate and soils as the proposed Lewis-Clark Valley AVA and would not be included in the proposed AVA even if viticulture was taking place currently. With respect to climate conditions, the GDD accumulations provided by the commenter ranged from 1,984 to 2,150, which is a significantly lower range from the 2,613–3,036 range found within the proposed AVA. Some grape varietals may grow successfully in regions that have the range of GDD accumulations found in the proposed expansion area. However, because the GDD accumulations are significantly lower within the proposed expansion area, TTB believes that the grapes would be growing under different climatic conditions than are found within the proposed AVA. Although the commenter claims that climate research and projections suggest that temperatures within the proposed expansion area may eventually become as warm as those within the proposed Lewis-Clark Valley AVA, TTB's determinations concerning the establishment or expansion of AVAs are based on currently available climate data.

Regarding the soils of the proposed expansion area, the commenter states that they are Andisols soils, which are composed largely of volcanic material. However, the proposed Lewis-Clark Valley AVA's soils are primarily Mollisols soils formed from decaying grasses and their roots. Although Andisols soils may be suitable for viticulture, the nutrients and minerals found in volcanic soils differ from those found in Mollisols soils and thus would create different growing conditions for grapevines.

Therefore, due to both a lack of current viticulture and shared distinguishing features in the proposed expansion area, TTB has determined that it will not expand the proposed Lewis-Clark Valley AVA to include the proposed expansion area described in comment 34.

Opposition to Proposed Columbia Valley AVA Boundary Realignment

TTB received one comment that supports the establishment of the proposed Lewis-Clark Valley AVA but opposes the proposed realignment of the Columbia Valley AVA (comment 35). The commenter, the owner of a vineyard within the proposed realignment area, stated that he believes his continued inclusion in the Columbia Valley AVA would be beneficial to his business and, therefore, he does not want his vineyard property to be removed from that AVA. Instead, the commenter stated that TTB should allow the proposed Lewis-Clark Valley to partially overlap the Columbia Valley because "the geology, soils and climate of the proposed Lewis-Clark Valley AVA are quite similar to those of the Columbia Valley and mostly lay within the elevations affected by the Missoula floods." The commenter did not provide any evidence to support his claim.

Because the proposed realignment of the Columbia Valley could potentially affect the business practices of wine industry members within the proposed realignment area, TTB published Notice No. 149A in the **Federal Register** on October 27, 2015 (80 FR 65670) to reopen the comment period for an additional 30 days. In Notice No. 149A, TTB asked for comments on whether the evidence provided in the petition to establish the proposed Lewis-Clark Valley AVA and to modify the boundary of the Columbia Valley AVA adequately demonstrates that the characteristics of the proposed realignment area are more similar to those of the rest of the proposed Lewis-Clark Valley AVA than to the distinguishing features of the Columbia Valley AVA. The reopened comment period closed November 27, 2015.

Comments Received During the Reopened Comment Period

During the reopened comment period, TTB received six additional comments on Notice No. 149. All six comments supported the proposed realignment of the Columbia Valley AVA. Two of the comments supported the proposed realignment but provided no additional evidence. The remaining four comments (comments 39, 40, 41, and 42) provided substantive evidence to support the proposed realignment.

Comment 39 was submitted by Dr. Wade Wolfe, who described himself as one of the contributors to the original Columbia Valley AVA petition. Dr. Wolfe states that defining the original "east boundary of the Columbia Valley was especially problematic" due to that region's cold temperatures, the lack of irrigation infrastructure for vineyards, and the use of the herbicide 2,4–D in the wheat fields of the Palouse. All of these factors, Dr. Wolfe states, limit the future of viticulture in the far eastern portion of the Columbia Valley AVA. In spite of these limiting factors, the decision was made to end the Columbia Valley at the Washington-Idaho border. Dr. Wolfe states his belief that a more appropriate eastern boundary would have been "a location near the Columbia and Garfield County line about 30 miles west of Pullman, WA." At this point, the Snake River Valley narrows to very steep slopes, and elevations rise to over 2,000 feet, making commercial viticulture unlikely. Dr. Wolfe further stated that the narrow canyon continues along the Snake River until the river "intersects with SR 12 just west of Clarkston," where the river valley opens up again. This intersection is along the northern border of the proposed realignment area. Dr. Wolfe asserts that the narrow portion of the Snake River creates a logical separation between the valley system of the Columbia Valley AVA and the valley system of the proposed Lewis-Clark Valley AVA.

Dr. Wolfe also states that the valley system of the proposed Lewis-Clark Valley AVA, including the proposed realignment area, is further differentiated from the valley system of the Columbia Valley AVA by its separate rain shadow. Marine moisture is blocked from entering the Columbia Valley AVA by the Cascade Mountains. By contrast, the proposed Lewis-Clark Valley AVA is in the rain shadow of the Blue Mountains and extensions of the Rocky Mountains. This different rain shadow, according to Dr. Wolfe, "redefines the valley drainage of this section of the Snake River and when combined with the Clearwater River drainage, justifies a separate valley AVA designation."

Comment 40 was submitted by a licensed geologist/hydrologist. The commenter states that while the Columbia Valley AVA and the proposed realignment area were both affected by repeated "Ice Age outbursts" from Lake Missoula, the effects of the floods were significantly different in both regions. The commenter states that the floods were backed up behind the Wallula Gap "when twice as much floodwater entered the gap than could actually pass through. This hydraulic dam also temporarily reversed the flow of the Snake River to near Lewiston." As a result of the build-up of water behind the Wallula Gap, "thick accumulations of sediment were deposited toward the center of the backflooded Walla Walla and Yakima Valleys," within the current Columbia Valley AVA.

The commenter also states that the proposed realignment area was affected by the Bonneville Flood, which did not extend farther into the Columbia Valley AVA. The Bonneville Flood deposited "sediments (soils) of a different character and composition" into the region of the proposed Lewis-Clark Valley AVA and the proposed realignment area, including soils derived from eroded "older sedimentary, metamorphic, and plutonic rocks of the North American craton." Finally, the commenter states that due to the "higher relief of the canyonlands within the Lewis-Clark Valley," the soils of the proposed AVA and the proposed realignment area contain a higher percentage of "talus and slopewash shed off the steep canyon walls." The commenter claims that these types of deposits are not common within the majority of the Columbia Valley AVA, which contains "broad, low-relief basins."

Comment 41 is from a self-described local wine consumer. The comment largely summarizes the evidence provided in the petition to establish the proposed Lewis-Clark Valley AVA and realign the boundary of the Columbia Valley AVA. The commenter states that the proposed realignment area should be removed from the Columbia Valley AVA because "from a statistical perspective," the vineyards within the proposed realignment area "would represent an outlier." He explains, "If one were to view the Columbia Valley AVA as a map scatter diagram, the vast majority of vineyards are located in the Interstate-82 corridor between Walla Walla and Yakima, WA." Approximately 100 miles separate the nearest Columbia Valley AVA vineyard from the nearest vineyard in the proposed realignment area, the commenter claims. Based on the lack of vineyards between Interstate 82 and the proposed realignment area, the commenter believes that the current boundary of the Columbia Valley AVA extends too far east, and the southeastern Columbia Valley AVA boundary should be modified to place the proposed realignment area solely in the proposed Lewis-Clark Valley AVA.

Comment 42 was submitted by Dr. Alan Busacca, who submitted the proposed Lewis-Clark Valley AVA petition. Dr. Busacca reiterated Dr. Wolfe's statement from comment 39 that the point where the Snake River narrows forms a logical division between the Columbia Valley AVA and the proposed Lewis-Clark Valley AVA. Dr. Busacca further reiterates that the topography of the proposed realignment area and the proposed AVA, which is described as a "unique, almost bowl-like set of plateaus and benches," is distinctly different from the topography of the Columbia Valley AVA. Dr. Busacca also states that if the climate, topography, and geology of the proposed realignment area are similar to the Columbia Valley AVA, as the opposing commenter claims, then the soils would also be similar, since those three features affect the formation of soil. However, Dr. Busacca states that of the 80 soils found within both the proposed AVA and the proposed realignment area, fewer than 8 also occur in the main grape-growing regions of the Columbia Valley AVA. Therefore, Dr. Busacca claims that the small number of shared soils demonstrates that the proposed realignment area does not share similar topographic, geologic, and climatic characteristics with the Columbia Valley AVA.

Finally, Dr. Busacca addresses the opposing commenter's statement that the proposed realignment area and the Columbia Valley AVA were both affected by the Missoula Floods. Dr. Busacca says that while the floodwaters did reach the proposed AVA, the waters had travelled almost 100 miles upstream along the Snake River, against the flow of the river. As a result, within the proposed AVA, the floods "caused almost no erosion, left little sediment behind, and thus did not today create more than a few tens of acres of unique terroir on small patched [sic] of flat land just above river level." By contrast, within the Columbia Valley AVA, the floods created the "scabland" regions and built up large deposits of "gravel, sand and silt up to hundreds of feet deep. . . . A whisper and a whimper of such effects totaling a hundred acres or two are all that these floods caused in the Lewiston-Clarkston area."

TTB Determination

After careful review of the petition and the 43 comments in total received in response to Notices No. 149 and No. 149A, TTB finds that the evidence provided by the petitioner and the commenters supports the establishment of the Lewis-Clark Valley AVA and the realignment of the boundary of the Columbia Valley AVA, in portions of Washington and Idaho. The realignment is in accordance with TTB's determination that the canyon-and-bench topography and Mollisols soils of the realignment area are more similar to the features of the Lewis-Clark Valley AVA than to the broad, rolling floodplains and Aridisols soils of the Columbia Valley AVA. Therefore, TTB is removing the realignment area from the Columbia Valley AVA and placing it entirely within the Lewis-Clark Valley AVA, as described in Notice No. 149. These determinations are made in accordance with the authority of the FAA Act, section 1111(d) of the Homeland Security Act of 2002, as well as parts 4 and 9 of the TTB regulations, and are effective 30 days from the publication date of this document.

Boundary Description

See the narrative description of the boundary of the Lewis-Clark Valley AVA and the modification of the boundary of the Columbia Valley AVA in the regulatory text published at the end of this final rule.

Maps

The petitioner provided the required maps, and they are listed below in the regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name or with a brand name that includes an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler must obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

With the establishment of this AVA, its name, "Lewis-Clark Valley," is recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the regulation clarifies this point. Consequently, wine bottlers using the name "Lewis-Clark Valley" in a brand name, including a trademark, or in another label reference as to the origin of the wine, must ensure that the product is eligible to use the AVA name as an appellation of origin.

Transition Period

Once this final rule to establish the Lewis-Clark Valley AVA and to modify the boundary of the Columbia Valley AVA becomes effective, a transition rule will apply to labels for wines produced from grapes grown in the portion of the Lewis-Clark Valley AVA that was formerly within the Columbia Valley AVA. A label containing the words "Columbia Valley" in the brand name or as an appellation of origin may be used on such wine bottled for up to two years from the effective date of this final rule, provided that such label was approved prior to the effective date of this final rule and that the wine conforms to the standards for use of the label set forth in 27 CFR 4.25 or 4.39(i) in effect prior to the final rule. At the end of this two-year transition period, if a wine is no longer eligible for labeling with the Columbia Valley name (*e.g.*, less than 85 percent of the wine is derived from grapes grown in the Columbia Valley, as modified in this final rule), then a label containing the words "Columbia Valley" in the brand name or as an appellation of origin would not be permitted on the bottle. TTB believes that the two-year period should provide adequate time to use up any existing labels. This transition period is described in the regulatory text for the Columbia Valley AVA published at the end of this final rule. In this final rule, TTB has added regulatory text to clarify that wine eligible for labeling with the Columbia Valley name under the new boundary of the Columbia Valley AVA will not be affected by the establishment of the Lewis-Clark Valley AVA or by this two-year transition period.

Regulatory Flexibility Act

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of an AVA name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this final rule is not a significant regulatory action as defined by Executive Order 12866 of

September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Karen A. Thornton of the Regulations and Rulings Division drafted this final rule.

List of Subjects in 27 CFR Part 9

Wine.

The Regulatory Amendment

For the reasons discussed in the preamble, TTB amends title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Amend § 9.74 by revising paragraphs (b) and (c)(38) through (40) and adding paragraph (d) to read as follows:

§ 9.74 Columbia Valley.

* * * * *

(b) *Approved maps.* The approved maps for determining the boundary of the Columbia Valley viticultural area are nine 1:250,000 scale U.S.G.S. maps and one 1:100,000 (metric) scale U.S.G.S. map. They are entitled:

(1) Concrete, Washington, U.S.; British Columbia, Canada, edition of 1955, limited revision 1963;

(2) Okanogan, Washington, edition of 1954, limited revision 1963;

(3) Pendleton, Oregon, Washington, edition of 1954, revised 1973;

(4) Pullman, Washington, Idaho, edition of 1953, revised 1974;

(5) Clarkston, Washington, Idaho, Oregon, 1:100,000 (metric) scale, edition of 1981;

(6) Ritzville, Washington, edition of 1953, limited revision 1965;

(7) The Dalles, Oregon, Washington, edition of 1953, revised 1971;

(8) Walla Walla, Washington, Oregon, edition of 1953, limited revision 1963;

(9) Wenatchee, Washington, edition of 1957, revised 1971; and

(10) Yakima, Washington, edition of 1958, revised 1971.

(c) * * *

(38) Then south following the Washington-Idaho State boundary on the 1:100,000 (metric) scale Clarkston, Washington, Idaho, Oregon map to the 600-meter elevation contour along the eastern boundary of section 9, R. 46 E./T. 11 N.; and then generally west following the meandering 600-meter contour to the eastern boundary of section 17, R. 45E./T. 11N.; then south following the eastern boundary of section 17 to the southern boundary of section 17; and then west following the southern boundaries of sections 17 and 18 to the Asotin-Garfield county line in section 19, R. 45E./T. 11N.;

(39) Then south following the Garfield-Asotin county line to the 600-meter elevation contour; then following generally west and south in a counterclockwise direction along the meandering 600-meter elevation contour to Charley Creek in section 4, R. 44 E./T. 9 N.; and then west following Charley Creek on to the township line between R. 42 E. and R. 43 E.;

(40) Then north following the township line between R. 42 E. and R. 43 E. on the 1:250,000 scale "Pullman, Washington, Idaho" map to Washington Highway 128 at Peola;

* * * * *

(d) *Transition period.* A label containing the words "Columbia Valley" in the brand name or as an appellation of origin approved prior to May 20, 2016 may be used on wine bottled before May 21, 2018 if the wine conforms to the standards for use of the label set forth in § 4.25 or § 4.39(i) of this chapter in effect prior to May 20, 2016.

■ 3. Add § 9.256 to read as follows:

§ 9.256 Lewis-Clark Valley.

(a) *Name.* The name of the viticultural area described in this section is "Lewis-Clark Valley". For purposes of part 4 of this chapter, "Lewis-Clark Valley" is a term of viticultural significance.

(b) *Approved maps.* The three United States Geographical Survey (USGS) 1:100,000 (metric) scale topographic maps used to determine the boundary of the Lewis-Clark Valley viticultural area are titled:

(1) Clarkston, Wash.-Idaho-Oregon, 1981;

(2) Orofino, Idaho-Washington, 1981; and

(3) Potlatch, Idaho, 1981.

(c) *Boundary.* The Lewis-Clark Valley viticultural area is located in Nez Perce, Lewis, Clearwater, and Latah Counties, Idaho, and Asotin, Garfield, and Whitman Counties, Washington. The boundary of the Lewis-Clark Valley viticultural area is as follows:

(1) The beginning point is located on the Clarkston map in Washington State along the Garfield-Asotin County line at the southwest corner of section 18, T11N/R45E. From the beginning point, proceed east along the southern boundary line of section 18, crossing over the Snake River, and continue along the southern boundary line of section 17, T11N/R45E, to the southeast corner of section 17; then

(2) Proceed north along the eastern boundary line of section 17 to the 600-meter elevation contour; then

(3) Proceed generally east-northeast along the meandering 600-meter elevation contour, crossing into Idaho and onto the Orofino map, then continue to follow the elevation contour in an overall clockwise direction, crossing back and forth between the Orofino and Clarkston maps and finally onto the Potlatch map, and then continuing to follow the 600-meter elevation contour in a clockwise direction to the elevation contour's intersection with the southern boundary line of section 1, T37N/R1W, on the Potlatch map, north of the Nez Perce Indian Reservation boundary and west of the Dworshak Reservoir (North Fork of the Clearwater River) in Clearwater County, Idaho; then

(4) Cross the Dworshak Reservoir (North Fork of the Clearwater River) by proceeding east along the southern boundary line of section 1, T37N/R1E, to the southeastern corner of section 1; then by proceeding north along the eastern boundary line of section 1 to the southwest corner of section 6, T37N/R2E; and then by proceeding east along the southern boundary line of section 6 to the 600-meter elevation contour; then

(5) Proceed generally east initially, then generally south, and then generally southeast along the meandering 600-meter elevation contour, crossing onto the Orofino map, and then continuing to follow the elevation contour in an overall clockwise direction, crossing back and forth between the Orofino and Potlatch maps, to the eastern boundary of section 13, T35N/R2E, on the Orofino map in Clearwater County, Idaho; then

(6) Proceed south along the eastern boundary of section 13, T35N/R2E, to the southeastern corner of section 13, T35N/R2E, northeast of Lolo Creek; then

(7) Proceed west along the southern boundary line of section 13, T35N/R2E, to the Clearwater-Idaho County line in the middle of Lolo Creek; then

(8) Proceed generally west-northwest along the Clearwater-Idaho County line (concurrent with Lolo Creek) to the Lewis County line at the confluence of Lolo Creek and the Clearwater River; then

(9) Proceed generally south along the Lewis-Idaho County line (concurrent with the Clearwater River) to the northern boundary line of section 23, T35N/R2E; then

(10) Proceed west along the northern boundary line of section 23, T35N/R2E, to the 600-meter elevation contour; then

(11) Proceed generally northwest along the meandering 600-meter elevation contour, crossing onto the Potlatch map and then back onto the Orofino map and continuing generally southwest along the 600-meter elevation contour to the common T32N/T31N township boundary line along the southern boundary line of section 35, T32N/R5W, south of Chimney Creek (a tributary of the Snake River) in Nez Perce County, Idaho; then

(12) Proceed west along the common T32N/T31N township boundary line, crossing Chimney Creek, to the Idaho-Washington State line (concurrent with the Nez Perce-Asotin County line) at the center of the Snake River; then

(13) Proceed generally southeast along the Idaho-Washington State line in the Snake River to the northern boundary line of section 29, T31N/R5W; then

(14) Proceed west along the northern boundary line of section 29, T31N/R5W, to the 600-meter elevation contour, northeast of Lime Hill in Asotin County, Washington; then

(15) Proceed generally west and then generally south-southwest along the meandering 600-meter elevation contour to the southern boundary line of section 25, T7N/R46E; then

(16) Proceed west along the southern boundary lines of section 25 and 26, crossing onto the Clarkston map, and continuing along the southern boundary lines of section 26 to the 600-meter elevation contour west of Joseph Creek; then

(17) Proceed southeast along the meandering 600-meter elevation contour to the western boundary line of section 34, T7N/R46E; then

(18) Proceed north along the western boundary lines of sections 34 and 27, T7N/R46E, crossing over the Grande Ronde River, to the 600-meter elevation contour; then

(19) Proceed generally northeast along the meandering 600-meter elevation contour and continue along the 600-meter elevation contour in a clockwise direction, crossing back and forth between the Clarkston and Orofino maps, until, on the Clarkston map, the 600-meter elevation line intersects the Garfield-Asotin County line for the third time along the western boundary of section 19, T11N/R45E; and then

(20) Proceed north along the Garfield-Asotin County line, returning to the beginning point.

Signed: March 28, 2016.

John J. Manfreda,

Administrator.

Approved: April 15, 2016.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 2016–09264 Filed 4–19–16; 8:45 am]

BILLING CODE 4810–31–P

POSTAL SERVICE

39 CFR Part 551

Semipostal Stamp Program

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: This final rule revises the provisions governing the Postal Service's discretionary Semipostal Stamp Program to simplify and expedite the process for selecting causes for semipostal stamps, and facilitate the issuance of five such stamps over a 10-year period. It also removes certain restrictions on the commencement date for the Postal Service's discretionary Semipostal Stamp Program, and clarifies how many semipostal stamps issued under that program may be on sale at any one time.

DATES: This rule is effective on: May 20, 2016.

FOR FURTHER INFORMATION CONTACT: Lori Mazzone, Manager, Stamp Products & Exhibitions, 202–268–6711, *lori.l.mazzone@usps.gov.*

SUPPLEMENTARY INFORMATION:

Publication of Proposed Rule

The Semipostal Authorization Act, Public Law 106–253, grants the Postal Service discretionary authority to issue and sell semipostal stamps to advance such causes as it considers to be "in the national public interest and appropriate." *See* 39 U.S.C. 416(b). On March 3, 2016, the Postal Service published and requested comments concerning a detailed revision of the rules concerning the discretionary Semipostal Stamp Program, as set forth in 39 CFR part 551 (81 FR 11164). As summarized below, these changes are designed to facilitate the smooth and efficient operation of the discretionary Semipostal Stamp Program.

Revisions

The revision of § 551.3 streamlines and simplifies the selection of causes to receive funds raised through the sale of semipostal stamps, and states the Postal Service's intention to issue five such stamps over the statutory ten-year period. It also notifies the public that no further consideration will be given to previously submitted proposals but that such proposals may be resubmitted under the revised regulations. The paragraph relating to proposals regarding the same subject and proposals for the sharing of funds between two agencies is edited for clarity and moved to § 551.4, concerning submission requirements and criteria, where it more appropriately belongs.

The revision of § 551.4 sharpens the submission requirements and, among other things, makes Postal Service employees ineligible to submit proposals for semipostal stamps.

The revision of § 551.5(a) removes certain restrictions on the commencement date of the discretionary Semipostal Stamp Program. Under current regulations, the 10-year period for the discretionary semipostal stamp program would commence on a date determined by the Office of Stamp Services, but that date must be after the sales period of the *Breast Cancer Research* stamp (BCRS) is concluded. Most recently, Public Law 114–99 (December 11, 2015) extended that sales period to December 31, 2019. As revised, the 10-year period will commence on a date determined by the Office of Stamp Services, but the date need not be after the BCRS sale period concludes.

The revision of § 551.5(b) clarifies that although only one semipostal stamp under the discretionary Semipostal Stamp Program under 39 U.S.C. 416 (a "discretionary program semipostal stamp") will be offered for sale at any one time, other semipostal stamps required to be issued by Congress (such as the BCRS) may be on sale when a discretionary program semipostal stamp is on sale. Current regulations state that the Postal Service will offer only one semipostal stamp for sale at any given time during the 10-year period (not specifying whether it is a discretionary program semipostal stamp or a semipostal stamp required by Congress). As revised, the one-at-a-time limitation on the sale of semipostal stamps applies only to discretionary program semipostal stamps.

To minimize confusion regarding applicable postage rates, the revision of § 551.6 specifies that for purposes of calculating the price of a semipostal, the First-Class Mail® single-piece *stamped* first-ounce rate of postage will be considered "the rate of postage that would otherwise regularly apply."

Comments and Response

The Postal Service received three comments in response to the proposed rule. All three comments supported the discretionary Semipostal Stamp Program, but suggested that the Postal Service should issue only one semipostal stamp for the entire ten-year duration of the program. The Postal Service believes that the public interest would be better served by issuing five different semipostal stamps for two years each during the ten-year period, and has determined to adopt the amendments to 39 CFR part 551 as proposed.

List of Subjects in 39 CFR Part 551

Administrative practice and procedure.

For the reasons stated in the preamble, the Postal Service hereby amends 39 CFR part 551 as follows:

PART 551—[AMENDED]

■ 1. The authority citation for part 551 continues to read as follows:

Authority: 39 U.S.C. 101, 201, 203, 401, 403, 404, 410, 414, 416.

■ 2. Revise § 551.3 to read as follows:

§ 551.3 Procedure for selection of causes and recipient executive agencies.

The Postal Service has discretionary authority to select causes and recipient executive agencies to receive funds raised through the sale of semipostal stamps. These regulations apply only to such discretionary semipostal stamps and do not apply to semipostal stamps that are mandated by Act of Congress, such as the *Breast Cancer Research* stamp. The procedure for selection of causes and recipient executive agencies is as follows:

(a) The Office of Stamp Services will accept proposals from interested persons for future semipostal stamps beginning on May 20, 2016. The Office of Stamp Services will begin considering proposals on July 5, 2016. The Postal Service intends to issue five semipostal stamps under these regulations during the 10-year period established by Congress in 39 U.S.C. 416(g). Each semipostal stamp will be sold for no more than two years. Proposals may be submitted and will be considered on a rolling basis until seven years after May 20, 2016. The Office of Stamp Services may publicize this request for proposals in the **Federal Register** or through other means, as it determines in its discretion. Proposals for semipostal stamps made prior to May 20, 2016 will not be given further consideration. Nothing in these regulations should be construed as barring the resubmission of previously submitted causes and recipient executive agencies.

(b) Proposals will be received by the Office of Stamp Services, which will review each proposal under § 551.4.

(c) The Office of Stamp Services will forward those proposals that satisfy the requirements of § 551.4 to the Citizens' Stamp Advisory Committee for its consideration.

(d) Based on the proposals received from the Office of Stamp Services, the Citizens' Stamp Advisory Committee may make recommendations on causes and eligible recipient executive agencies to the postmaster general. The Citizens' Stamp Advisory Committee may recommend more than one cause and eligible recipient executive agency at the same time.

(e) Meetings of the Citizens' Stamp Advisory Committee are closed, and deliberations of the Citizens' Stamp Advisory Committee are pre-decisional in nature.

(f) In making decisions concerning semipostal stamps, the postmaster general may take into consideration such factors, including the recommendations of the Citizens' Stamp Advisory Committee, as the postmaster general determines are appropriate. The decision of the postmaster general shall be the final agency decision.

(g) The Office of Stamp Services will notify each executive agency in writing of a decision designating that agency as a recipient of funds from a semipostal stamp.

(h) As either a separate matter, or in combination with recommendations on a cause and recipient executive agencies, the Citizens' Stamp Advisory Committee may recommend to the postmaster general a design (*i.e.*, artwork) for the semipostal stamp. The postmaster general will make a final decision on the design to be featured.

(i) The decision of the postmaster general to exercise the Postal Service's discretionary authority to issue a semipostal stamp is final and not subject to challenge or review.

■ 3. Revise § 551.4 to read as follows:

§ 551.4 Submission requirements and selection criteria.

(a) Proposals on recipient executive agencies and causes must satisfy the following requirements:

(1) Interested persons must timely submit the proposal by U.S. Mail to the Office of Stamp Services, Attn: Semipostal Discretionary Program, 475 L'Enfant Plaza SW., Room 3300, Washington, DC 20260–3501, or in a single Adobe Acrobat (.pdf) file sent by email to *semipostal@usps.gov.* Indicate in the Subject Line: *Semipostal Discretionary Program.* For purposes of this section, interested persons include, but are not limited to, individuals, corporations, associations, and executive agencies under 5 U.S.C. 105.

(2) The proposal must be signed by the individual or a duly authorized representative and must provide the mailing address, phone number, fax number (if available), and email address of a designated point of contact.

(3) The proposal must describe the cause and the purposes for which the funds would be used.

(4) The proposal must demonstrate that the cause to be funded has broad national appeal, and that the cause is in the national public interest and furthers human welfare. Respondents are encouraged to submit supporting documentation demonstrating that funding the cause would benefit the national public interest.

(5) The proposal must include a letter from an executive agency or agencies on agency letterhead representing that:

(i) It is an executive agency as defined in 5 U.S.C. 105,

(ii) It is willing and able to implement the proposal, and

(iii) It is willing and able to meet the requirements of the Semipostal Authorization Act, if it is selected. The letter must be signed by a duly authorized representative of the agency.

(6)(i) A proposal may designate one or two recipient executive agencies to receive funds, but if more than one executive agency is proposed, the proposal must specify the percentage shares of differential revenue, net of the Postal Service's reasonable costs, to be given to each agency. If percentage shares are not specified, it is presumed that the proposal intends that the funds be split evenly between the agencies. If more than two recipient executive agencies are proposed to receive funds and the proposal is selected, the postmaster general will provide the recipient executive agencies with an opportunity to jointly decide which two agencies will receive funds. If the agencies are unable to reach a joint decision within 20 days, the postmaster general shall either decide which two agencies will receive funds or select another proposal.

(ii) If more than one proposal is submitted for the same cause, and the proposals would have different executive agencies receiving funds, the funds may be evenly divided among the executive agencies, with no more than two agencies being designated to receive funds, as determined by the postmaster general.

(b) Proposals become the property of the Postal Service and are not returned to interested persons who submit them. Interested persons who submit proposals are not entitled to any remuneration, compensation, or any other form of payment, whether their proposals are selected or not, for any reason.

(c) The following persons may not submit proposals:

(1) Employees of the United States Postal Service;

(2) Any contractor of the Postal Service that may stand to benefit financially from the Semipostal Stamp Program; or

(3) Members of the Citizens' Stamp Advisory Committee and their immediate families, and contractors of the Postal Service, and their immediate families, who are involved in any decision-making related to causes, recipient agencies, or artwork for the Semipostal Stamp Program.

(d) Consideration for evaluation will not be given to proposals that request support for any of the following: Anniversaries; public works; people; specific organizations or associations; commercial enterprises or products; cities, towns, municipalities, counties, or secondary schools; hospitals, libraries, or similar institutions; religious institutions; causes that do not further human welfare; or causes determined by the Postal Service or the Citizens' Stamp Advisory Committee to be inconsistent with the spirit, intent, or history of the Semipostal Authorization Act.

(e) Artwork and stamp designs may not be submitted with proposals.

■ 5. Revise § 551.5 to read as follows:

§ 551.5 Frequency and other limitations.

(a) The Postal Service is authorized to issue semipostal stamps for a 10-year period beginning on the date on which semipostal stamps are first sold to the public under 39 U.S.C. 416. The Office of Stamp Services will determine the date of commencement of the 10-year period.

(b) The Postal Service will offer only one discretionary semipostal stamp for sale at any given time during the 10-year period, although a discretionary semipostal stamp may be offered for sale at the same time as one or more congressionally mandated semipostal stamps.

(c) The sales period for any given discretionary semipostal stamp is limited to no more than two years, as determined by the Office of Stamp Services.

(d) Prior to or after the issuance of a given discretionary semipostal stamp, the Postal Service may withdraw the semipostal stamp from sale, or to reduce the sales period, if, *inter alia:*

(1) Its sales or revenue statistics are lower than expected,

(2) The sales or revenue projections are lower than expected, or

(3) The cause or recipient executive agency does not further, or does not comply with, the statutory purposes or requirements of the Semipostal Authorization Act.

■ 6. Revise § 551.6 to read as follows:

§ 551.6 Pricing.

(a) The Semipostal Authorization Act, as amended by Public Law 107–67, section 652, 115 Stat. 514 (2001), prescribes that the price of a semipostal stamp is the rate of postage that would otherwise regularly apply, plus a differential of not less than 15 percent. The price of a semipostal stamp shall be an amount that is evenly divisible by five. For purposes of this provision, the First-Class Mail® single-piece stamped first-ounce rate of postage will be considered the rate of postage that would otherwise regularly apply.

(b) The prices of semipostal stamps are determined by the Governors of the United States Postal Service in accordance with the requirements of 39 U.S.C. 416.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2016–09081 Filed 4–19–16; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2015–0243; A–1–FRL–9945–12-Region 1]

Air Plan Approval; Vermont; Stage I Vapor Recovery Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Vermont. This revision includes regulatory amendments that clarify and Stage I vapor recovery requirements at gasoline dispensing facilities (GDFs). The intended effect of this action is to approve Vermont's revised Stage I vapor recovery regulations. This action is being taken in accordance with the Clean Air Act.

DATES: This direct final rule will be effective June 20, 2016, unless EPA receives adverse comments by May 20, 2016. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2015–0243 at *http://www.regulations.gov,* or via email to *Arnold.Anne@epa.gov.* For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Ariel Garcia, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code: OEP05–2), Boston, MA 02109–3912, telephone number (617) 918–1660, fax number (617) 918–0660, email *garcia.ariel@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. Background and Purpose
II. Summary of Vermont's SIP Revision
III. EPA's Evaluation of Vermont's SIP Revision
IV. Final Action
V. Incorporation by Reference
VI. Statutory and Executive Order Reviews

I. Background and Purpose

On January 26, 2015, the State of Vermont Department of Environmental Conservation submitted a formal revision to its State Implementation Plan (SIP). The SIP revision consists of Vermont's revised Air Pollution Control Regulation (APCR) Section 5–101, *Definitions;* APCR Section 5–253.2, *Bulk Gasoline Terminals;* APCR Section 5–253.3, *Bulk Gasoline Plants;* and APCR Section 5–253.5, *Stage I Vapor Recovery Controls at Gasoline Dispensing Facilities.*

Stage I vapor recovery systems are systems that capture vapors displaced from storage tanks at GDFs during gasoline tank truck deliveries. When gasoline is delivered into an aboveground or underground storage tank, vapors that were taking up space in the storage tank are displaced by the gasoline entering the storage tank. The Stage I vapor recovery systems route these displaced vapors into the delivery truck's tank. Some vapors are vented when the storage tank exceeds a specified pressure threshold, however the Stage I vapor recovery systems greatly reduce the possibility of these displaced vapors being released into the atmosphere.

Stage I vapor recovery systems have been in place since the 1970s. EPA has issued the following guidance regarding Stage I systems: "Design Criteria for Stage I Vapor Control Systems—Gasoline Service Stations" (November 1975, EPA Online Publication 450R75102), which is regarded as the control techniques guideline (CTG) for the control of Volatile Organic Compound (VOC) emissions from this source category; and the EPA document "Model Volatile Organic Compound Rules for Reasonably Available Control Technology" (Staff Working Draft, June 1992) contains a model Stage I regulation. EPA has also issued the following CTGs, relevant to this SIP revision: "Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals" (December 1977, EPA–450/2–77–026); and "Control of Volatile Organic Emissions from Bulk Gasoline Plants" (December 1977, EPA–450/2–77–035).

II. Summary of Vermont's SIP Revision

The Vermont APCR Section 5–253.2, *Bulk Gasoline Terminals;* Section 5–253.3, *Bulk Gasoline Plants;* and Section 5–253.5, *Stage I Vapor Recovery Controls at Gasoline Dispensing Facilities,* were initially approved into the Vermont SIP on April 22, 1998 (63 FR 19829). Vermont's APCRs required gasoline dispensing facilities throughout the state to install Stage I vapor recovery systems and satisfied Reasonably Available Control Technology (RACT) for gasoline dispensing facilities, bulk gasoline terminals, and bulk gasoline plants. The SIP revision approved on April 22, 1998 also included definitions in Section 5–101, *Definitions* that were associated with the VOC RACT rules.

On January 26, 2015, Vermont submitted a SIP revision consisting of its revised APCR Sections 5–101, 5–253.2, 5–253.3, and 5–253.5. This SIP revision includes regulatory amendments that clarify Stage I vapor recovery requirements, simplify definitions relating to gasoline storage and distribution at gasoline terminals and bulk gasoline plants, improve the consistency of the Vermont APCRs with federal requirements for GDFs, and help to ensure that VOC emission reductions achieved by existing Stage I vapor recovery systems are maintained.

Vermont's January 26, 2015 SIP revision included the amended APCR Section 5–253.5, *Stage I Vapor Recovery Controls at Gasoline Dispensing Facilities,* which was revised to clarify requirements in the existing Stage I vapor recovery regulation. Amongst other clarifying revisions in Vermont's APCR Section 5–253.5, the Stage I vapor recovery regulation was: Revised to ensure awareness that GDFs must also comply with the federal regulations for GDFs, EPA's National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Source Category: Gasoline Dispensing Facilities, 40 CFR part 63, subpart CCCCCC; revised to include definitions for "dual-point vapor Stage I vapor recovery system," "monthly gasoline throughput," and "startup"; and revised to include a compliance schedule for the installation of dual-point Stage I vapor recovery systems for those GDFs not already so equipped.

In addition, the amended APCRs in Vermont's January 26, 2015 SIP revision were revised as follows: The amended APCR Section 5–101, *Definitions,* includes revised definitions for "bulk gasoline terminal" and "vapor balance system"; the amended APCR Section 5–253.2, *Bulk Gasoline Terminals,* adds a reference to a "vapor control system" in addition to the previous wording, which only referred to "vapor collection system," thus clarifying that the gasoline vapors displaced from gasoline tank trucks during loading must be collected and controlled, and that the emission limits from such vapors apply to both the collection and control systems; and the amended APCR Section 5–253.3, *Bulk Gasoline Plants,* was revised for clarity as a result of the revised APCR 5–101 definition of "vapor balance system."

III. EPA's Evaluation of Vermont's SIP Revision

EPA has reviewed Vermont's revised APCRs Sections 5–101, 5–253.2, 5–253.3, and 5–253.5, and has concluded that Vermont's January 26, 2015 SIP revision is approvable. Specifically, Vermont's revised regulations continue to be consistent with EPA's CTGs and meet RACT for the relevant emission source categories.

In addition, Vermont's revised APCRs included in the January 26, 2015 SIP revision are more stringent than the previously approved versions of the rules, thus meeting the CAA section 110(l) anti-backsliding requirements. EPA's most recent approval of APCR Sections 5–253.2 and 5–253.5 was on April 22, 1998 (see 63 FR 19825), Section 5–253.3 was on July 19, 2011 (see 76 FR 42560), and Section 5–101 was on October 5, 2012 (see 77 FR 60907). Vermont's revised APCRs submitted with their January 26, 2015 SIP revision are more stringent by incorporating the requirement for GDFs to meet the federal NESHAP and by clarifying that Stage I requirements apply to vapor control systems as well as vapor collection systems. Furthermore, the defined terms and clarifications added to the Vermont APCRs ensure that all entities subject to the regulations clearly understand the applicable requirements.

Finally, we note that in certain instances the regulations we are approving authorize a Vermont "Air Pollution Control Officer" to make certain determinations or to require specific actions. In approving such provisions, although EPA's authority regarding such determinations or actions is not expressly referenced in the regulatory text, EPA does not intend, and could not intend as a matter of law, to preclude EPA from exercising any legal authority EPA may have under the Clean Air Act and its implementing regulations. The regulatory language at Vermont APCR Section 5–253.5(c)(3), relating to determinations regarding whether a facility is being operated and maintained in a manner consistent with safety and good engineering practices for minimizing emissions, is one example of such a provision. Although the provision does not reference EPA's legal authority, the provision would not, and could not, function as a legal matter to preclude EPA from exercising any relevant authority it may have under the Clean Air Act or its implementing regulations.

IV. Final Action

EPA is approving, and incorporating into the Vermont SIP, Vermont's revised APCRs Section 5–101, *Definitions;* Section 5–253.2, *Bulk Gasoline Terminals;* Section 5–253.3, *Bulk Gasoline Plants;* and Section 5–253.5, *Stage I Vapor Recovery Controls at Gasoline Dispensing Facilities.* EPA is approving Vermont's January 26, 2015 SIP revision because it meets all applicable requirements of the CAA and EPA guidance.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective June 20, 2016 without further notice unless the Agency receives relevant adverse comments by May 20, 2016.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 20, 2016 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of Vermont's APCRs described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available electronically through *http://www.regulations.gov.*

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 20, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 1, 2016.

H. Curtis Spalding,

Regional Administrator, EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart UU—Vermont

■ 2. In § 52.2370, the table in paragraph (c) is amended by revising entries for Sections 5–101, 5–253.2, 5–253.3, and 5–253.5 to read as follows:

§ 52.2370 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED VERMONT REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanations
*	*	* *	*	* *
Section 5–101	Definitions	12/29/14	April 20, 2016 [Insert **Federal Register** citation].	Revised definitions for "bulk gasoline terminal" and "vapor balance system.".
*	*	* *	*	* *
Section 5–253.2	Bulk Gasoline Terminals	12/29/14	April 20, 2016 [Insert **Federal Register** citation].	
Section 5–253.3	Bulk Gasoline Plants	12/29/14	April 20, 2016 [Insert **Federal Register** citation].	
*	*	* *	*	* *
Section 5–253.5	Stage I Vapor Recovery Controls at Gasoline Dispensing Facilities.	12/29/14	April 20, 2016 [Insert **Federal Register** citation].	
*	*	* *	*	* *

* * * * *

[FR Doc. 2016–09068 Filed 4–19–16; 8:45 am]

BILLING CODE 6560–50–P

EVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–2015–NY2; FRL–9935–51–Region 2]

Approval and Promulgation of Air Quality Implementation Plans; New York; Update to Materials Incorporated by Reference

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; administrative change.

SUMMARY: The Environmental Protection Agency (EPA) is updating the materials that are incorporated by reference (IBR) into the New York State Implementation Plan (SIP). The regulations affected by this update have been previously submitted by the New York State Department of Environmental Conservation and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), and the EPA Regional Office.

DATES: This rule is effective April 20, 2016.

ADDRESSES: SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866; and the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.* To view the material at the Region 2 Office, EPA requests that you email the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th floor, New York, NY 10008–1866, telephone number (212) 637–3381, email: *wieber.kirk@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The SIP is a living document which a state revises as necessary to address its unique air pollution problems. Therefore, EPA, from time to time, must take action on SIP revisions containing new and/or revised regulations as being part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally-approved SIPs, as a result of consultations between EPA and the Office of the Federal Register (OFR). The description of the revised SIP document, IBR procedures and "Identification of plan" format are discussed in further detail in the May 22, 1997 **Federal Register** document. On July 15, 2011 (76 FR 41705), EPA published a document in the **Federal Register** beginning the revised IBR procedure for New York.

This Final Rule continues the revised IBR procedure for New York. In this document, EPA is publishing an updated set of tables listing the regulatory (*i.e.,* IBR) materials in the New York SIP taking into account the additions, corrections and revisions to those materials previously submitted by the state agency and approved by EPA. We are removing the EPA Headquarters Library from paragraph (b)(3), as IBR materials are no longer available at this location. In addition, EPA has found errors in certain entries listed in 40 CFR 52.1670(c), as amended in the published IBR update actions listed above, and is correcting them in this document.

Since the July 15, 2011 publication of the new IBR procedure, EPA has approved changes to the following regulations and sections for New York:

A. Added Regulations

1. Additions of the following regulations or sections in Title 6 of the New York Code of Rules and Regulations:

a. Part 240, Conformity to State or Federal Implementation Plans of

Transportation Plans, Programs and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws, and

b. Part 241, Asphalt Pavement and Asphalt Based Surface Coating, and

c. Part 249, Best Available Retrofit Technology (BART).

2. Additions of the following regulations or sections in Title 19 of the New York Code of Rules and Regulations:

a. Part 937, Access to Publicly Available Records.

3. Additions of the following regulations or sections in the New York Environmental Conservation Law:

a. Section 19–0325.

4. Additions of the following regulations or sections in the New York Public Officers Law:

a. Section 73–a, Financial disclosure.

B. Revised Regulations

1. Revisions to the following regulations or sections in Title 6 of the New York Code of Rules and Regulations:

a. Part 200, General Provisions,

i. Subpart 200.1, and

ii. Subpart 200.9.

b. Part 205, Architectural and Industrial Maintenance (AIM) Coatings.

c. Part 211, General Prohibitions.

d. Part 212, General Process Emission.

e. Part 217, Motor Vehicle Emissions.

i. Subpart 217–1, Motor Vehicle Enhanced Inspection and Maintenance Program Requirements Until December 31, 2010,

ii. Subpart 217–4, Inspection and Maintenance Program Audits Until December 31, 2010, and

iii. Subpart 217–6, Motor Vehicle Enhanced Inspection and Maintenance Program Requirements Beginning January 1, 2011.

f. Part 220, Portland Cement Plants and Glass Plants.

g. Part 227, Stationary Combustion Installations,

i. Subpart 227–2, Reasonably Available Control Technology (RACT) For Major Facilities of Oxides of Nitrogen (NO_X).

h. Part 228, Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers.

i. Part 234, Graphic Arts.

2. Revisions to the following regulations in Title 15 of the New York Code of Rules and Regulations:

a. Part 79, Motor Vehicle Inspection Regulations

i. Sections 79.1–79.15, 79.17, 79.20, 79.21, 79.24, 79.25.

C. Added State Source Specific Requirements

1. Alcoa Massena Operations (West Plant)—Potline S–00001, Baking furnace S–00002, Package Boilers B–00001, Permit ID 6–4058–00003.
2. Arthur Kill Generating Station, NRG—Boiler 30, Permit ID 2–6403–00014.
3. Bowline Generating Station, GenOn—Boilers 1 and 2, Permit ID 3–3922–00003.
4. Con Edison 59th Street Station—Steam Boilers 114 and 115, Permit ID 2–6202–00032.
5. EF Barrett Power Station, NG—Boiler 2, Permit ID 1–2820–00553.
6. International Paper Ticonderoga Mill—Power Boiler and Recovery Furnace, Permit ID 5–1548–00008.
7. Kodak Operations at Eastman Business Park, Kodak—Boilers 41, 42 and 43, Permit ID 8–2614–00205.
8. Lafarge Building Materials—Kilns 1 and 2, Permit ID 4–0124–00001.
9. Lehigh Northeast Cement, Lehigh Cement—Kiln and Clinker cooler, Permit ID 5–5205–00013.
10. Northport Power Station, NG—Boilers 1, 2, 3, and 4, Permit ID 1–4726–00130.
11. Oswego Harbor Power, NRG—Boilers 5 and 6, Permit ID 7–3512–00030.
12. Owens-Corning Insulating Systems Feura Bush, Owens Corning—EU2, EU3, EU12, EU13, and EU14, Permit ID 4–0122–00004.
13. Ravenswood Generating Station, TC—Boilers 10, 20, 30, Permit ID 2–6304–00024.
14. Ravenswood Steam Plant, Con Edison—Boiler 2, Permit ID 2–6304–01378.
15. Roseton Generating Station-Dynegy—Boilers 1 and 2, Permit ID 3–3346–00075.
16. Samuel A Carlson Generating Station, Jamestown Board of Public Utilities—Boiler 12, Permit ID 9–0608–00053.
17. Syracuse Energy Corporation [GDF Suez]—Boiler 1, Permit ID 7–3132–00052.

II. EPA Action

In this action, EPA is announcing the update to the IBR material as of August 1, 2015. EPA has determined this rule falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation and section 553(d)(3) which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). This rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are "impractical, unnecessary, or contrary to the public interest." Public comment is "unnecessary" and "contrary to the public interest" since the codification only reflects existing law. Immediate notice in the CFR benefits the public by removing outdated citations and incorrect table entries.

III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the New York regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act (CAA), the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

EPA has also determined that the provisions of section 307(b)(1) of the CAA pertaining to petitions for judicial review are not applicable to this action. Prior EPA rulemaking actions for each individual component of the New York SIP compilations previously afforded interested parties the opportunity to file a petition for judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of such rulemaking action. Thus, EPA sees no need in this action to reopen the 60-day period for filing such petitions for judicial review for this "Identification of plan" reorganization update action for the State of New York.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and record keeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 22, 2015.

Judith A. Enck,

Regional Administrator, Region 2.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart HH—New York

■ 2. In § 52.1670, paragraphs (b), (c), and (d) are revised to read as follows:

§ 52.1670 Identification of plan.

* * * * *

(b) *Incorporation by reference.* (1) Material listed in paragraphs (c) and (d) of this section with an EPA approval date prior to August 1, 2015, was approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Material is incorporated as it exists on the date of the approval, and notification of any change in the material will be published in the **Federal Register**. Entries in paragraphs (c) and (d) of this section with an EPA approval date after August 1, 2015, will be incorporated by reference in the next update to the SIP compilation.

(2) EPA Region 2 certifies that the rules/regulations provided by the EPA in the SIP compilation at the addresses in paragraph (b)(3) of this section are an exact duplicate of the officially promulgated State rules/regulations, which have been approved as part of the SIP as of August 1, 2015.

(3) Copies of the materials incorporated by reference may be inspected at the Environmental Protection Agency, Region 2, Air Programs Branch, 290 Broadway, New York, New York 10007; and the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

(c) *EPA approved regulations.*

EPA-Approved New York State Regulations and Laws

State citation	Title/subject	State effective date	EPA approval date	Comments
Title 6, Part 200, Subpart 200.1.	General Provisions, Definitions	1/1/11	7/12/13	• The word odor is removed from the Subpart 200.1(d) definition of "air contaminant or air pollutant." • Redesignation of non-attainment areas to attainment areas (200.1(av)) does not relieve a source from compliance with previously applicable requirements as per letter of Nov. 13, 1981 from H. Hovey, NYSDEC. • Changes in definitions are acceptable to EPA unless a previously approved definition is necessary for implementation of an existing SIP regulation.

EPA-APPROVED NEW YORK STATE REGULATIONS AND LAWS—Continued

State citation	Title/subject	State effective date	EPA approval date	Comments
				• EPA is including the definition of "Federally enforceable" with the understanding that (1) the definition applies to provisions of a Title V permit that are correctly identified as Federally enforceable, and (2) a source accepts operating limits and conditions to lower its potential to emit to become a minor source, not to "avoid" applicable requirements. • EPA approval finalized at 78 FR 41846.
Title 6, Part 200, Subpart 200.6.	General Provisions, Acceptable ambient air quality.	2/25/00	4/22/08	• EPA approval finalized at 73 FR 21548.
Title 6, Part 200, Subpart 200.7.	General Provisions, Maintenance of equipment.	2/25/00	4/22/08	• EPA approval finalized at 73 FR 21548.
Title 6, Part 200, Subpart 200.9.	Referenced material	1/1/11	7/12/13	• EPA is approving reference documents that are not already Federally enforceable. • EPA approval finalized at 78 FR 41846.
Title 6, Part 201	Permits and Registrations	4/4/93	10/3/05	• This action removes subpart 201.5(e) from the State's Federally approved SIP. • EPA approval finalized at 70 FR 57511.
Title 6, Part 201,Subpart 201–2.1(b)(21).	Permits and Registrations, Definitions	3/5/09	11/17/10	• EPA is including the definition of "Major stationary source or major source or major facility" with the understanding that the definition applies only to provisions of part 231. • EPA approval finalized at 75 FR 70142.
Title 6, Part 201, Subpart 201–7.1.	Permits and Registrations, Federally Enforceable Emission Caps.	7/7/96	10/3/05	• EPA approval finalized at 70 FR 57511.
Title 6, Part 201, Subpart 201–7.2.	Permits and Registrations, Emission Capping Using Synthetic Minor Permits.	7/7/96	10/3/05	• EPA approval finalized at 70 FR 57511.
Title 6, Part 202	Emissions Testing, Sampling and Analytical Determinations.	3/24/79	11/12/81	• EPA approval finalized at 46 FR 55690.
Title 6, Part 202, Subpart 202–2.	Emission Statements	5/29/05	10/31/07	• Section 202–2.3(c)(9) requires facilities to report individual HAPs that may not be classified as criteria pollutants or precursors to assist the State in air quality planning needs. EPA will not take SIP-related enforcement action on these pollutants. • EPA approval finalized at 72 FR 61530.
Title 6, Part 204	$\mathrm{NO_X}$ Budget Trading Program	2/25/00	5/22/01	• Incorporates $\mathrm{NO_X}$ SIP Call and $\mathrm{NO_X}$ Budget Trading Program for 2003 and thereafter. • EPA approval finalized at 66 FR 28063.
Title 6, Part 205	Architectural and Industrial Maintenance (AIM) Coatings.	1/1/11	3/8/12	• EPA approval finalized at 77 FR 13974.
Title 6, Part 207	Control Measures for an Air Pollution Episode.	2/22/79	11/12/81	• EPA approval finalized at 46 FR 55690.
Title 6, Part 211	General Prohibitions	1/1/11	3/8/12	• Section 211.1 (previously numbered 211.2) is not part of the approved plan. (see 11/27/98, 63 FR 65559). • EPA approval finalized at 77 FR 13974.
Title 6, Part 212	General Process Emission Sources	9/30/10	7/12/13	• SIP revisions submitted in accordance with § 212.10(c)(3) and 212.12(c) are effective only if approved by EPA. • EPA approval finalized at 78 FR 41846.
Title 6, Part 213	Contaminant Emissions from Ferrous Jobbing Foundries.	5/1/72	9/22/72	• EPA approval finalized at 37 FR 19814.
Title 6, Part 214	By-Product Coke Oven Batteries	9/22/94	7/20/06	• EPA approval finalized at 71 FR 41163.

EPA-APPROVED NEW YORK STATE REGULATIONS AND LAWS—Continued

State citation	Title/subject	State effective date	EPA approval date	Comments
Title 6, Part 215	Open Fires	6/16/72	9/22/72	• EPA approval finalized at 37 FR 19814.
Title 6, Part 216	Iron and/or Steel Processes	9/22/94	7/20/06	• EPA approval finalized at 71 FR 41163.
Title 6, Part 217, Subpart 217–1.	Motor Vehicle Emissions, Motor Vehicle Enhanced Inspection and Maintenance Program Requirements Until December 31, 2010.	12/5/10	2/28/12	• EPA approval finalized at 77 FR 11742.
Title 6, Part 217, Subpart 217–4.	Motor Vehicle Emissions, Inspection and Maintenance Program Audits Until December 31, 2010.	12/5/10	2/28/12	• EPA approval finalized at 77 FR 11742.
Title 6, Part 217, Subpart 217–6.	Motor Vehicle Emissions, Motor Vehicle Enhanced Inspection and Maintenance Program Requirements Beginning January 1, 2011.	12/5/10	2/28/12	• EPA approval finalized at 77 FR 11742.
Title 6, Part 218, Subpart 218–1.	Emission Standards for Motor Vehicles and Motor Vehicle Engines, Applicability and Definitions.	12/28/00	1/31/05	• EPA's approval of part 218 only applies to light-duty vehicles. • EPA approval finalized at 70 FR 4773.
Title 6, Part 218, Subpart 218–2.	Emission Standards for Motor Vehicles and Motor Vehicle Engines, Certification and Prohibitions.	12/28/00	1/31/05	• EPA's approval of part 218 only applies to light-duty vehicles. • EPA approval finalized at 70 FR 4773.
Title 6, Part 218, Subpart 218–3.	Emission Standards for Motor Vehicles and Motor Vehicle Engines, Fleet Average.	12/28/00	1/31/05	• EPA's approval of part 218 only applies to light-duty vehicles. • EPA approval finalized at 70 FR 4773.
Title 6, Part 218, Subpart 218–4.	Emission Standards for Motor Vehicles and Motor Vehicle Engines, Zero Emissions Vehicle Sales Mandate.	5/28/92	1/6/95	• EPA's approval of part 218 only applies to light-duty vehicles. • EPA approval finalized at 60 FR 2025.
Title 6, Part 218, Subpart 218–5.	Emission Standards for Motor Vehicles and Motor Vehicle Engines, Testing.	12/28/00	1/31/05	• EPA's approval of part 218 only applies to light-duty vehicles. • EPA approval finalized at 70 FR 4773.
Title 6, Part 218, Subpart 218–6.	Emission Standards for Motor Vehicles and Motor Surveillance.	12/28/00	1/31/05	• EPA's approval of part 218 only applies to light-duty vehicles. • EPA approval finalized at 70 FR 4773.
Title 6, Part 218, Subpart 218–7.	Emission Standards for Motor Vehicles and Motor Vehicle Engines, Aftermarket Parts.	12/28/00	1/31/05	• EPA's approval of part 218 only applies to light-duty vehicles. • EPA approval finalized at 70 FR 4773.
Title 6, Part 218, Subpart 218–8.	Emission Standards for Motor Vehicles and Motor Vehicle Engines, Severability.	12/28/00	1/31/05	• EPA's approval of part 218 only applies to light-duty vehicles. • EPA approval finalized at 70 FR 4773.
Title 6, Part 219	Incinerators	5/1/72	9/22/72	• EPA approval finalized at 37 FR 19814.
Title 6, Part 220	Portland Cement Plants and Glass Plants	7/11/10	7/12/13	• SIP revisions submitted in accordance with §220–1.6(b)(4) and 220–2.3(a)(4) are effective only if approved by EPA. • EPA approval finalized at 78 FR 41846.
Title 6, Part 222	Incinerators—New York City, Nassau and Westchester Counties.	6/17/72	9/22/72	• EPA approval finalized at 37 FR 19814.
Title 6, Part 223	Petroleum Refineries	8/9/84	7/19/85	• EPA approval finalized at 50 FR 29382.
Title 6, Part 224	Sulfuric and Nitric Acid Plants	5/10/84	7/19/85	• Variances adopted by the State pursuant to Part 224.6(b) become applicable only if approved by EPA as SIP revisions. • EPA approval finalized at 50 FR 29382.
Title 6, Part 225, Subpart 225–1.	Fuel Composition and Use-Sulfur Limitations.	3/24/79	11/12/81	• Variances adopted by the State pursuant to §§225.2(b) and (c), 225.3, and 225.5(c) become applicable only if approved by EPA or SIP revisions (40 CFR 52.1675(e)). • EPA approval finalized at 46 FR 55690.
Title 6, Part 225, Subpart 225–2.	Fuel Composition and Use-Waste Fuel	7/28/83	8/2/84	• EPA approval finalized at 49 FR 30936.

EPA-APPROVED NEW YORK STATE REGULATIONS AND LAWS—Continued

State citation	Title/subject	State effective date	EPA approval date	Comments
Title 6, Part 225, Subpart 225–3.	Fuel Composition and Use-Gasoline	11/4/01	9/8/05	• The Variance adopted by the State pursuant to section 225–3.5 becomes applicable only if approved by EPA as a SIP revision. • EPA approval finalized at 70 FR 53304.
Title 6, Part 226	Solvent Metal Cleaning Processes	5/7/03	1/23/04	• EPA approval finalized at 69 FR 3237.
Title 6, Part 227, Subpart 227.2(b)(1).	Stationary Combustion Installations	5/1/72	9/22/72	• 1972 version. • EPA approval finalized at 37 FR 19814.
Title 6, Part 227,Subpart 227–1.	Stationary Combustion Installations	2/25/00	5/22/01	• Existing Part 227 is renumbered Subpart 227–1. • Renumbered sections 227–1.2(a)(2), 227–1.4(a), and 227–1.4(d) continue to be disapproved according to 40 CFR 52.1678(d) and 52.1680(a). (New York repealed existing Part 227.5.). • EPA approval finalized at 66 FR 28063.
Title 6, Part 227,Subpart 227–2.	Stationary Combustion Installations, Reasonably Available Control Technology (RACT) For Major Facilities of Oxides of Nitrogen (NO_X).	7/8/10	7/12/13	• SIP revisions submitted in accordance with § 227–2.3(c) are effective only if approved by EPA. • EPA approval finalized at 78 FR 41846.
Title 6, Part 227,Subpart 227–3.	Stationary Combustion Installations, Pre-2003 Nitrogen Oxides Emissions Budget and Allowance Program.	3/5/99	5/22/01	• Approval of NO_X Budget Trading Program for 1999, 2000, 2001 and 2002. NO_X caps in the State during 2003 and thereafter established in Part 204. • EPA approval finalized at 66 FR 28063.
Title 6, Part 228	Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers.	6/5/13	3/4/14	• EPA approval finalized at 79 FR 12082.
Title 6, Part 229	Petroleum and Volatile Organic Liquid Storage and Transfer.	4/4/93	12/23/97	• SIP revisions submitted in accordance with Section 229.3(g)(1) are effective only if approved by EPA. • EPA approval finalized at 62 FR 67006.
Title 6, Part 230	Gasoline Dispensing Sites and Transport Vehicles.	9/22/94	4/30/98	• EPA approval finalized at 63 FR 23668.
Title 6, Part 231	New Source Review for New and Modified Facilities.	3/5/09	11/17/10	• Partial approval; no action taken on provisions that may require PSD permits for sources of greenhouse gas (GHG) emissions with emissions below the thresholds identified in EPA's final PSD and Title V GHG Tailoring Rule at 75 FR 31514, 31606 (June 3, 2010). • EPA approval finalized at 75 FR 70140.
Title 6, Part 232	Dry Cleaning	8/11/83	6/17/85	• EPA has not determined that § 232.3(a) provides for reasonably available control technology. • EPA approval finalized at 50 FR 25079.
Title 6, Part 233	Pharmaceutical and Cosmetic Manufacturing Processes.	4/4/93	12/23/97	• SIP revisions submitted in accordance with Section 223.3(h)(1) are effective only if approved by EPA. • EPA approval finalized at 62 FR 67006.
Title 6, Part 234	Graphic Arts	7/8/10	3/8/12	• SIP revisions submitted in accordance with § 234.3(f) are effective only if approved by EPA. • EPA approval finalized at 77 FR 13974.
Title 6, Part 235	Consumer Products	10/15/09	5/28/10	• EPA approval finalized at 75 FR 29897.

EPA-APPROVED NEW YORK STATE REGULATIONS AND LAWS—Continued

State citation	Title/subject	State effective date	EPA approval date	Comments
Title 6, Part 236	Synthetic Organic Chemical Manufacturing Facility Component Leaks.	1/12/92	7/27/93	• Variances adopted by the State pursuant to Part 236.6(e)(3) become applicable only if approved by EPA as a SIP revision. • EPA approval finalized at 58 FR 40059.
Title 6, Part 239	Portable Fuel Container Spillage Control	7/30/09	5/28/10	• The specific application of provisions associated with alternate test methods, variances and innovative products, must be submitted to EPA as SIP revisions. • EPA approval finalized at 75 FR 29897.
Title 6, Part 240, Subpart 240–1.	Transportation Conformity, Transportation Conformity General Provisions.	9/13/13	7/29/14	• EPA approval finalized at 79 FR 43945.
Title 6, Part 240, Subpart 240–2.	Transportation Conformity, Consultation	9/13/13	7/29/14	• EPA approval finalized at 79 FR 43945.
Title 6, Part 240, Subpart 240–3.	Transportation Conformity, Regional Transportation-Related Emissions and Enforceability.	9/13/13	7/29/14	• EPA approval finalized at 79 FR 43945.
Title 6, Part 241	Asphalt Pavement and Asphalt Based Surface Coating.	1/1/11	3/8/12	• EPA approval finalized at 77 FR 13974.
Title 6, Part 243	CAIR NO_X Ozone Season Trading Program.	10/19/07	1/24/08	• EPA approval finalized at 73 FR 4112.
Title 6, Part 244	CAIR NO_X Annual Trading Program	10/19/07	1/24/08	• EPA approval finalized at 73 FR 4112.
Title 6, Part 245	CAIR SO_2 Trading Program	10/19/07	1/24/08	• EPA approval finalized at 73 FR 4112.
Title 6, Part 249	Best Available Retrofit Technology (BART).	5/6/10	8/28/12	• EPA approval finalized at 77 FR 51915.
Title 15, Part 79, Subparts 79.1–79.15, 79.17, 79.20, 79.21, 79.24, 79.25.	Motor Vehicle Inspection Regulations	12/29/10	2/28/12	• EPA approval finalized at 77 FR 11742.
Title 19, Part 937	Access To Publicly Available Records	8/27/12	6/20/13	• Only subpart 937.1(a) is approved into the SIP and is for the limited purpose of satisfying Clean Air Act Section 128(a)(2). • EPA approval finalized at 78 FR 37124.
Section 19–0325	Environmental Conservation Law, Sulfur reduction requirements.	7/15/10	8/28/12	• EPA approval finalized at 77 FR 51915.
Section 73–a	Public Officers Law, Financial disclosure	8/15/11	6/20/13	• Only subsections 73–a(2)(a)(i) and (ii) are approved into the SIP and are for the limited purpose of satisfying Clean Air Act Section 128(a)(2). • EPA approval finalized at 78 FR 37124.

(d) *EPA approved State source-specific requirements.*

EPA-APPROVED NEW YORK SOURCE-SPECIFIC PROVISIONS

Name of source	Identifier No.	State effective date	EPA approval date	Comments
Dunlop Tire and Rubber Corporation.	Consent Order 81–36, 9–0420.	8/19/81	1/26/84	• Part 212 VOC RACT Compliance Plan. • Green tire spraying, bead dipping, and under tread and tread end cementing processes. • EPA approval finalized at 49 FR 3436.
Dunlop Tire and Rubber Corporation.	Consent Order 81–36, 9–0420, Amendment Letter 1.	1/29/82	1/26/84	• Part 212 VOC RACT Compliance Plan. • Green tire spraying, bead dipping, and under tread and tread end cementing processes. • EPA approval finalized at 49 FR 3436.
Dunlop Tire and Rubber Corporation.	Consent Order 81–36, 9–0420, Amendment Letter 2.	3/3/82	1/26/84	• Part 212 VOC RACT Compliance Plan. • Green tire spraying, bead dipping, and under tread and tread end cementing processes. • EPA approval finalized at 49 FR 3436.

EPA-APPROVED NEW YORK SOURCE-SPECIFIC PROVISIONS—Continued

Name of source	Identifier No.	State effective date	EPA approval date	Comments
Morton International Inc.	A563203003500027C	9/1/95	9/23/97	• Part 227–2, NO_X RACT determination. • Emission point 00027. • EPA approval finalized at 62 FR 49617.
Morton International Inc.	A563203003500027C, Special Conditions.	8/23/95	9/23/97	• Part 227–2, NO_X RACT determination. • Emission point 00027. • EPA approval finalized at 62 FR 49617.
University of Rochester	8–2614–00548/00006–0	4/25/96	9/23/97	• Part 227–2, NO_X RACT determination. • Emission points 00003 and 0005. • EPA approval finalized at 62 FR 49617.
University of Rochester	8–2614–00548/00006–0, Special Conditions.	3/19/96	9/23/97	• Part 227–2, NO_X RACT determination. • Emission points 00003 and 0005. • EPA approval finalized at 62 FR 49617.
Algonquin Gas Transmission Company.	3–3928–1/9–0	9/23/91	9/23/97	• Part 227–2, NO_X RACT determination. • Emission Points R0100, R0200, R0300, and R0400. • Permit and Special Conditions. • EPA approval finalized at 62 FR 49617.
Algonquin Gas Transmission Company.	3–3928, Special Conditions.	3/18/96	9/23/97	• Part 227–2, NO_X RACT determination. • Emission Points R0100, R0200, R0300. • EPA approval finalized at 62 FR 49617.
Algonquin Gas Transmission Company.	3–3928–00001/00013	3/29/96	9/23/97	• Part 227–2, NO_X RACT determination. • Emission Point R0400. • EPA approval finalized at 62 FR 49617.
Algonquin Gas Transmission Company.	3–39228–00001/ 00010,11,12,13.	8/8/96	9/23/97	• Permit Correction. • Part 227–2, NO_X RACT determination. • Emission Points R0100, R0200, R0300, and R0400. • EPA approval finalized at 62 FR 49617.
Tenneco Gas Corporation's (also known as Tenneco Gas Pipeline Company and Tennessee Gas Pipeline Company).	144000	8/22/95	7/21/03	• Part 227–2, NO_X RACT determination. • Compressor Station 229. • Emission Points 0001A through 0006A. • EPA approval finalized at 68 FR 42981.
Tenneco Gas Corporation's (also known as Tenneco Gas Pipeline Company and Tennessee Gas Pipeline Company).	215600, Special Conditions.	2/24/97	7/21/03	• Part 227–2, NO_X RACT determination. • Compressor Station 245. • Emission Points 00001 through 00006. • EPA approval finalized at 68 FR 42981.
Tenneco Gas Corporation's (also known as Tenneco Gas Pipeline Company and Tennessee Gas Pipeline Company).	102600	10/4/95	7/21/03	• Part 227–2, NO_X RACT determination. • Compressor Station 254. • Emission Points 00001 through 00006. • EPA approval finalized at 68 FR 42981.
Tenneco Gas Corporation's (also known as Tenneco Gas Pipeline Company and Tennessee Gas Pipeline Company).	102600,Special Conditions.	9/15/95	7/21/03	• Part 227–2, NO_X RACT determination. • Compressor Station 254. • Emission Points 00001 through 00006. • EPA approval finalized at 68 FR 42981.
General Chemical Corporation.	7–3132–00009/00012	12/16/97	7/1/04	• Part 212, NO_X RACT determination. 6/23/05 letter informing NYSDEC that the approval will automatically convert to a disapproval. • Emission Points 0SN1A and 0SN1B. • EPA approval finalized at 69 FR 39858.
ALCOA Massena Operations (West Plant).	6–4058–00003	3/20/12	8/28/12	• Part 249 BART. • Emission Points Potline S–00001, Baking furnace S–00002, Package Boilers B–00001. • EPA approval finalized at 77 FR 51915.
Arthur Kill Generating Station, NRG.	2–6403–00014	3/20/12	8/28/12	• Part 249 BART. • Boiler 30. • EPA approval finalized at 77 FR 51915.
Bowline Generating Station, GenOn.	3–3922–00003	6/28/12	8/28/12	• Part 249 BART. • Boilers 1 and 2. • EPA approval finalized at 77 FR 51915.
Con Edison 59th Street Station.	2–6202–00032	3/20/12	8/28/12	• Part 249 BART. • Steam Boilers 114 and 115. • EPA approval finalized at 77 FR 51915.

EPA-APPROVED NEW YORK SOURCE-SPECIFIC PROVISIONS—Continued

Name of source	Identifier No.	State effective date	EPA approval date	Comments
EF Barrett Power Station, NG.	1–2820–00553	3/27/12	8/28/12	• Part 249 BART. • Boiler 2. • EPA approval finalized at 77 FR 51915.
International Paper Ticonderoga Mill.	5–1548–00008	3/19/12	8/28/12	• Part 249 BART. • Power Boiler and Recovery Furnace. • EPA approval finalized at 77 FR 51915.
Kodak Operations at Eastman Business Park, Kodak.	8–2614–00205	5/25/12	8/28/12	• Part 249 BART. • Boilers 41, 42 and 43. • EPA approval finalized at 77 FR 51915.
Lafarge Building Materials	4–0124–00001	7/19/11	8/28/12	• Condition 12–14. • Kilns 1 and 2. • EPA approval finalized at 77 FR 51915.
Lehigh Northeast Cement, Lehigh Cement.	5–5205–00013	7/5/12	8/28/12	• Part 220 and Part 249 BART. • Kiln and Clinker cooler. • EPA approval finalized at 77 FR 51915.
Northport Power Station, NG.	1–4726–00130	3/27/12	8/28/12	• Part 249 BART. • Boilers 1, 2, 3, and 4. • EPA approval finalized at 77 FR 51915.
Oswego Harbor Power, NRG.	7–3512–00030	5/16/12	8/28/12	• Part 249 BART. • Boilers 5 and 6. • EPA approval finalized at 77 FR 51915.
Owens-Corning Insulating Systems Feura Bush, Owens Corning.	4–0122–00004	5/18/12	8/28/12	• Part 249 BART. • EU2, EU3, EU12, EU13, and EU14. • EPA approval finalized at 77 FR 51915.
Ravenswood Generating Station, TC.	2–6304–00024	4/6/12	8/28/12	• Part 249 BART. • Boilers 10, 20, 30. • EPA approval finalized at 77 FR 51915.
Ravenswood Steam Plant, Con Edison.	2–6304–01378	3/20/12	8/28/12,	• Part 249 BART. • Boiler 2. • EPA approval finalized at 77 FR 51915.
Roseton Generating Station-Dynegy.	3–3346–00075	11/02/11	8/28/12	• Excluding the SO_2 BART emissions limits for Boilers 1 and 2 and corresponding monitoring, recordkeeping, and reporting requirements, which EPA disapproved. • Boilers 1 and 2. • EPA approval finalized at 77 FR 51915.
Samuel A Carlson Generating Station, James town Board of Public Utilities.	9–0608–00053	2/8/12	8/28/12	• Part 249 BART. • Boiler 12. • EPA approval finalized at 77 FR 51915.
Syracuse Energy Corporation [GDF Suez].	7–3132–00052	5/24/12	8/28/12	• Part 249 BART. • Boiler 1. • EPA approval finalized at 77 FR 51915.

* * * * *

[FR Doc. 2016–08829 Filed 4–19–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2015–0402; FRL–9945–13–Region 1]

Air Plan Approval; Rhode Island; Infrastructure State Implementation Plan Requirements for Particle Matter, Ozone, Lead, Nitrogen Dioxide and Sulfur Dioxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving most elements of State Implementation Plan (SIP) submissions from Rhode Island regarding the infrastructure requirements of the Clean Air Act (CAA or Act) for the 1997 fine particle matter ($PM_{2.5}$), 2006 $PM_{2.5}$, 2008 lead (Pb), 2008 ozone, 2010 nitrogen dioxide (NO_2), and 2010 sulfur dioxide (SO_2) National Ambient Air Quality Standards (NAAQS). Additionally, EPA is disapproving the submissions with respect to CAA section 110(a)(2)(H), for which a Federal Implementation Plan has been in place for this requirement since 1973. EPA is also correcting an earlier approval of this element for the 1997 8-hour ozone NAAQS infrastructure requirements. Finally, EPA is approving several statutes submitted by Rhode Island in support of their demonstration that the infrastructure requirements of the CAA have been met. Lastly, EPA is conditionally approving certain elements of Rhode Island's submittal relating to Prevention of Significant Deterioration (PSD) requirements.

DATES: This rule is effective on May 20, 2016.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2015–0402. All documents in the docket are listed on the *http://www.regulations.gov* Web site, although some information, such as confidential business information or other information whose disclosure is restricted by statute is not publicly available. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *http://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, Air Quality Planning Unit, Air Programs Branch (Mail Code OEP05–02), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts, 02109–3912; (617) 918–1664; *burkhart.richard@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. Background and Purpose
II. Public Comments
III. Final Action
IV. Incorporation by Reference
V. Statutory and Executive Order Reviews

I. Background and Purpose

This rulemaking addresses infrastructure SIP submissions from the State of Rhode Island for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS. The state submitted these infrastructure SIPs on the following dates: 1997 $PM_{2.5}$—September 10, 2008; 2006 $PM_{2.5}$—November 6, 2009; 2008 Pb—October 26, 2011; 2008 ozone—January 2, 2013; 2010 NO_2—January 2, 2013; and 2010 SO_2—June 27, 2014. Details of Rhode Island's submittals and EPA evaluation of those submittals can be found in our Notice of Proposed Rulemaking (NPR) (81 FR 10168; February 29, 2016).

EPA is approving most of the elements of the above submittals (details can be found below). Additionally, EPA is disapproving the submissions with respect to CAA section 110(a)(2)(H). For this element, a Federal Implementation Plan has been in place for this requirement since 1973, such that no further action is required by EPA or Rhode Island. EPA is also, under section 110(k)(6) of the Act, correcting an earlier approval of this element for the 1997 8-hour ozone NAAQS infrastructure requirements. The correction changes our prior approval of element H for the 1997 ozone NAAQS infrastructure requirements to a disapproval. As stated above, a FIP is already in place, so no further action is required by EPA or Rhode Island. Furthermore, EPA is approving into the Rhode Island SIP several statutes submitted by Rhode Island in support of their demonstration that the infrastructure requirements of the CAA have been met. Also, we are conditionally approving certain elements of Rhode Island's submittal relating to the PSD requirements.

In addition, EPA is removing the following sections from the Code of Federal Regulations (CFR): 40 CFR 52.2073(a); 52.2074(a) and (b); 52.2075(a); 52.2078(a); and 52.2079. These sections are no longer necessary for the reasons outlined in the NPR. Finally, although the NPR also proposed removal of 40 CFR 52.2073(b), 52.2075(b), and 52.2078(b), we are not taking final action with respect to these sections today.

II. Public Comments

EPA did not receive any comments in response to the NPR.

III. Final Action

EPA is approving SIP submissions from Rhode Island certifying that the state's current SIP is sufficient to meet the required infrastructure elements under sections 110(a)(1) and (2) of the Act for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, 2008 Pb, 2008 ozone, 2010 NO_2, and 2010 SO_2 NAAQS, with the exception of certain aspects relating to the state's PSD program which we are conditionally approving. Additionally, EPA is disapproving the submissions with respect to CAA section 110(a)(2)(H). EPA is also correcting an earlier approval of this element for the 1997 8-hour ozone NAAQS infrastructure requirements. The corrective action is taken under section 110(k)(6) of the Act. The correction changes our prior approval of element H for the 1997 ozone infrastructure requirement to a disapproval of element H. Finally, we are conditionally approving certain elements of Rhode Island's submittals relating to the PSD requirements.

Specifically, EPA's actions for each infrastructure SIP requirement are shown in Table 1.

TABLE 1—EPA'S ACTION ON RHODE ISLAND'S INFRASTRUCTURE SIP SUBMITTALS FOR LISTED NAAQS

Element	2008 Pb	2008 ozone	2010 NO_2	2010 SO_2	1997 $PM_{2.5}$	2006 $PM_{2.5}$
(A): Emission limits and other control measures	A	A	A	A	A	A
(B): Ambient air quality monitoring and data system	A	A	A	A	A	A
(C)1: Enforcement of SIP measures	A	A	A	A	A	A
(C)2: PSD program for major sources and major modifications	A*	A*	A*	A*	A*	A*
(C)3: PSD program for minor sources and minor modifications	A	A	A	A	A	A
(D)1: Contribute to nonattainment/interfere with maintenance of NAAQS	A	NI	NI	NI	NI	NT
(D)2: PSD	A*	A*	A*	A*	A*	A*
(D)3: Visibility Protection	A	A	A	A	A	A
(D)4: Interstate Pollution Abatement	A	A	A	A	A	A
(D)5: International Pollution Abatement	A	A	A	A	A	A
(E): Adequate resources	A	A	A	A	A	A
(E): State boards	A	A	A	A	A	A
(E): Necessary assurances with respect to local agencies	NA	NA	NA	NA	NA	NA
(F): Stationary source monitoring system	A	A	A	A	A	A
(G): Emergency power	A	A	A	A	A	A
(H): Future SIP revisions	D	D	D	D	D	D
(I): Nonattainment area plan or plan revisions under part D	+	+	+	+	+	+
(J)1: Consultation with government officials	A	A	A	A	A	A

TABLE 1—EPA'S ACTION ON RHODE ISLAND'S INFRASTRUCTURE SIP SUBMITTALS FOR LISTED NAAQS—Continued

Element	2008 Pb	2008 ozone	2010 NO_2	2010 SO_2	1997 $PM_{2.5}$	2006 $PM_{2.5}$
(J)2: Public notification	A	A	A	A	A	A
(J)3: PSD	A*	A*	A*	A*	A*	A*
(J)4: Visibility protection	+	+	+	+	+	+
(K): Air quality modeling and data	A	A	A	A	A	A
(L): Permitting fees	A	A	A	A	A	A
(M): Consultation and participation by affected local entities	A	A	A	A	A	A

In the above table, the key is as follows:

A* Approve

A Approve, but conditionally approve aspect of PSD program relating to the identification of NO_X as a precursor for ozone and addressing the changes made to 40 CFR part 51.116 in EPA's October 20, 2010 rulemaking (75 FR 64864) concerning emissions of fine particulate.

D Disapprove, but no further action required because federal regulations already in place.

+ Not germane to infrastructure SIPs.

NI Not included in the September 10, 2008 ($PM_{2.5}$), January 2, 2013 (ozone and NO_2), and May 30, 2013 (SO_2) submittals which are the subject of today's action.

NT Not taking action in today's action.

NS No Submittal.

NA Not applicable.

In addition, we are incorporating into the Rhode Island SIP the following Rhode Island statutes which were included for approval in Rhode Island's infrastructure SIP submittals: (1) Rhode Island General Laws, Title 23—Health and Safety, Chapter 23–23—Air Pollution, Section 23–23–5—Powers and duty of the director., and Section 23–23–16—Emergencies.; (2) Rhode Island General Laws, Title 23—Health and Safety, Chapter 23–23.1—Air Pollution Episode Control, Section 23–23.1–5—Proclamations of episodes and issuance of orders.; and (3) Rhode Island General Laws, Title 36—Public Officers and Employees, Chapter 36–14—Code of Ethics, Sections 36–14–1 through 36–14–7.

Furthermore, EPA is removing the following sections from the CFR: 40 CFR 52.2073(a); 52.2074(a) and (b); 52.2075(a); 52.2078(a); and 52.2079. These sections are no longer necessary for the reasons outlined in the NPR.

As noted in Table 1, EPA is conditionally approving aspects of Rhode Island's SIP submittals pertaining to the state's PSD program. The outstanding issue with the PSD program concerns adding NO_X as a precursor for ozone, and addressing the changes made to 40 CFR part 51.116 in the October 20, 2010 rulemaking (75 FR 64864) concerning emissions of fine particulate. Rhode Island must submit to EPA by April 20, 2017, these revisions to its PSD program. If Rhode Island fails to do so, this approval will become a disapproval on that date. EPA will notify RI DEM by letter that this action has occurred. At that time, this commitment will no longer be a part of the approved Rhode Island SIP. EPA subsequently will publish a notice in the notice section of the **Federal Register** notifying the public that the conditional approval automatically converted to a disapproval. If the state meets its commitment within the applicable timeframe, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new submittal. If EPA disapproves the new submittal, the conditionally approved aspect of Rhode Island's PSD program will also be disapproved at that time. If EPA approves the revised PSD program submittal, then the portions of Rhode Island's infrastructure SIP submittals that were conditionally approved will be fully approved in their entirety and replace the conditional approval in the SIP. In addition, final disapproval of an infrastructure SIP submittal triggers the Federal Implementation Plan (FIP) requirement under section 110(c).

IV. Incorporation by Reference

In this rulemaking, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of: (1) Rhode Island General Laws, Title 23—Health and Safety, Chapter 23–23—Air Pollution, Section 23–23–5—Powers and duty of the director., and Section 23–23–16—Emergencies.; (2) Rhode Island General Laws, Title 23—Health and Safety, Chapter 23–23.1—Air Pollution Episode Control, Section 23–23.1–5—Proclamations of episodes and issuance of orders.; and (3) Rhode Island General Laws, Title 36—Public Officers and Employees, Chapter 36–14—Code of Ethics, Sections 36–14–1 through 36–14–7. These are described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available through *http://www.regulations.gov.*

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National

Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 20, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 7, 2016.

H. Curtis Spalding,

Regional Administrator, EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart OO—Rhode Island

■ 2. In § 52.2070, Tables (c) and (e) are amended by adding new state citations to the end of the tables to read as follows:

§ 52.2070 Identification of plan.

* * * * *

(c) *EPA approved regulations.*

EPA-APPROVED RHODE ISLAND REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanations
* * * * * * *				
Rhode Island General Laws, Title 23, Chapter 23–23.	Air Pollution	Submitted 1/2/2013[1]	4/20/2016 [Insert **Federal Register** citation].	Section 23–23–5—Powers and duty of director. Section 23–23–16—Emergencies.
Rhode Island General Laws, Title 23, Chapter 23–23.1.	Air Pollution Episode Control.	Submitted 1/2/2013[1]	4/20/2016 [Insert **Federal Register** citation].	Section 23–23.1–5—Proclamations of episodes and issuances of orders.
Rhode Island General Laws, Title 36, Chapter 36–14.	Code of Ethics	Submitted 1/2/2013[1]	4/20/2016 [Insert **Federal Register** citation].	Section 36–14–1—Declaration of policy. Section 36–14–2—Definitions. Section 36–14–3—Code of ethics. Section 36–14–4—Persons subject to the code of ethics. Section 36–14–5—Prohibited activities. Section 36–14–6—Statement of conflict of interest. Section 36–14–7—Interest in conflict with discharge of duties.

[1] This is the date Rhode Island submitted these Rhode Island General Laws to EPA for approval.

* * * * *

(e) *Nonregulatory.*

RHODE ISLAND NON-REGULATORY

Name of non regulatory SIP provision	Applicable geographic or nonattainment area	State submittal date/ effective date	EPA approved date	Explanations
* *	*	*	*	* *
Infrastructure SIP for the 2008 Ozone NAAQS.	Statewide	Submitted 1/2/2013	4/20/2016 [Insert **Federal Register** citation].	Approved submittal, except for certain aspects related to PSD which were conditionally approved and element (H) which was disapproved. See 52.2077.
Infrastructure SIP for the 2008 Lead NAAQS.	Statewide	Submitted 10/26/2011	4/20/2016 [Insert **Federal Register** citation].	Approved submittal, except for certain aspects related to PSD which were conditionally approved and element (H) which was disapproved. See 52.2077.
Infrastructure SIP for the 2010 NO$_2$ NAAQS.	Statewide	Submitted 1/2/2013	4/20/2016 [Insert **Federal Register** citation].	Approved submittal, except for certain aspects related to PSD which were conditionally approved and element (H) which was disapproved. See 52.2077.
Infrastructure SIP for the 1997 PM$_{2.5}$ NAAQS.	Statewide	Submitted 9/10/2008	4/20/2016 [Insert **Federal Register** citation].	Approved submittal, except for certain aspects related to PSD which were conditionally approved and element (H) which was disapproved. See 52.2077.
Infrastructure SIP for 2006 PM$_{2.5}$ NAAQS.	Statewide	Submitted 11/6/2009	4/20/2016 [Insert **Federal Register** citation].	Approved submittal, except for certain aspects related to PSD which were conditionally approved and element (H) which was disapproved. See 52.2077.
Infrastructure SIP for 2010 SO$_2$ NAAQS.	Statewide	Submitted 6/27/2014	4/20/2016 [Insert **Federal Register** citation].	Approved submittal, except for certain aspects related to PSD which were conditionally approved and element (H) which was disapproved. See 52.2077.

§ 52.2073 [Amended]

■ 3. Section 52.2073 is amended by removing and reserving paragraph (a).

§ 52.2074 [Amended]

■ 4. Section 52.2074 is amended by removing and reserving paragraphs (a) and (b).

§ 52.2075 [Amended]

■ 5. Section 52.2075 is amended by removing and reserving paragraph (a).

■ 6. Section 52.2077 is added to read as follows:

§ 52.2077 Identification of plan—conditional approvals and disapprovals.

(a) *Conditional approvals.* (1) 2008 Ozone National Ambient Air Quality Standards (NAAQS): The 110(a)(2) infrastructure SIP submitted on January 2, 2013, is conditionally approved for Clean Air Act sections 110(a)(2)(C)(ii), (D)(i)(II), and (J)(iii) only as it relates to the aspect of the Prevention of Significant Deterioration (PSD) program pertaining to adding NO$_X$ as a precursor for ozone, and addressing the changes made to 40 CFR part 51.116 in the October 20, 2010 rulemaking (75 FR 64864) concerning emissions of fine particulate. On February 18, 2016, the State of Rhode Island supplemented this submittal with a commitment to address these requirements for PSD.

(2) 2008 Lead NAAQS: The 110(a)(2) infrastructure SIP submitted on October 26, 2011, is conditionally approved for Clean Air Act sections 110(a)(2)(C)(ii), (D)(i)(II), and (J)(iii) only as it relates to the aspect of the PSD program pertaining to adding NO$_X$ as a precursor for ozone, and addressing the changes made to 40 CFR part 51.116 in the October 20, 2010 rulemaking (75 FR 64864) concerning emissions of fine particulate. On February 18, 2016, the State of Rhode Island supplemented this submittal with a commitment to address these requirements for PSD.

(3) 2010 Nitrogen Dioxide NAAQS: The 110(a)(2) infrastructure SIP submitted on January 2, 2013, is conditionally approved for Clean Air Act sections 110(a)(2)(C)(ii), (D)(i)(II), and (J)(iii) only as it relates to the aspect of the PSD program pertaining to adding NO$_X$ as a precursor for ozone, and addressing the changes made to 40 CFR part 51.116 in the October 20, 2010 rulemaking (75 FR 64864) concerning emissions of fine particulate. On February 18, 2016, the State of Rhode Island supplemented this submittal with a commitment to address these requirements for PSD.

(4) 1997 fine particulate (PM$_{2.5}$) NAAQS: The 110(a)(2) infrastructure SIP submitted on September 10, 2008, is conditionally approved for Clean Air Act sections 110(a)(2)(C)(ii), (D)(i)(II), and (J)(iii) only as it relates to the aspect of the PSD program pertaining to adding NO$_X$ as a precursor for ozone, and addressing the changes made to 40 CFR part 51.116 in the October 20, 2010 rulemaking (75 FR 64864) concerning emissions of fine particulate. On February 18, 2016, the State of Rhode Island supplemented this submittal with a commitment to address these requirements for PSD.

(5) 2006 PM$_{2.5}$ NAAQS: The 110(a)(2) infrastructure SIP submitted on

November 6, 2009, is conditionally approved for Clean Air Act sections 110(a)(2)(C)(ii), (D)(i)(II), and (J)(iii) only as it relates to the aspect of the PSD program pertaining to providing adding NO_X as a precursor for ozone, and addressing the changes made to 40 CFR part 51.116 in the October 20, 2010 rulemaking (75 FR 64864) concerning emissions of fine particulate. On February 18, 2016, the State of Rhode Island supplemented this submittal with a commitment to address these requirements for PSD.

(b) *Disapprovals.* (1) 1997 Ozone NAAQS: The 110(a)(2) infrastructure SIP submitted on December 14, 2007, is disapproved for Clean Air Act element 110(a)(2)(H). A Federal Implantation Plan is already in place at 40 CFR 52.2080.

(2) 2008 Ozone NAAQS: The 110(a)(2) infrastructure SIP submitted on January 2, 2013, is disapproved for Clean Air Act element 110(a)(2)(H). A Federal Implantation Plan is already in place at 40 CFR 52.2080.

(3) 2008 Lead NAAQS: The 110(a)(2) infrastructure SIP submitted on October 26, 2011, is disapproved for Clean Air Act element 110(a)(2)(H). A Federal Implantation Plan is already in place at 40 CFR 52.2080.

(4) 2010 Nitrogen Dioxide NAAQS: The 110(a)(2) infrastructure SIP submitted on January 2, 2013, is disapproved for Clean Air Act element 110(a)(2)(H). A Federal Implantation Plan is already in place at 40 CFR 52.2080.

(5) 1997 $PM_{2.5}$ NAAQS: The 110(a)(2) infrastructure SIP submitted on September 10, 2008, is disapproved for Clean Air Act element 110(a)(2)(H). A Federal Implantation Plan is already in place at 40 CFR 52.2080.

(6) 2006 $PM_{2.5}$ NAAQS: The 110(a)(2) infrastructure SIP submitted on November 6, 2009, is disapproved for Clean Air Act element 110(a)(2)(H). A Federal Implantation Plan is already in place at 40 CFR 52.2080.

§ 52.2078 [Amended]

■ 7. Section 52.2078 is amended by removing and reserving paragraph (a).

§ 52.2079 [Removed and Reserved]

■ 8. Section 52.2079 is removed and reserved.

[FR Doc. 2016–08913 Filed 4–19–16; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2013–0556, FRL–9945–14–Region 8]

Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 2008 Lead, 2008 Ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ National Ambient Air Quality Standards; Montana

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving elements of State Implementation Plan (SIP) revisions from the State of Montana to demonstrate the State meets infrastructure requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for ozone on March 12, 2008, lead (Pb) on October 15, 2008, nitrogen dioxide (NO_2) on January 22, 2010, sulfur dioxide (SO_2) on June 2, 2010 and fine particulate matter ($PM_{2.5}$) on December 14, 2012. The EPA is also approving 110(a)(2)(D)(ii) for the 1997 and 2006 $PM_{2.5}$ NAAQS. The EPA is conditionally approving CAA section 110(a)(2)(C) and (J) with regard to Prevention of Significant Deterioration (PSD) and element 3 of 110(a)(2)(D)(i)(II) for the 2008 ozone, 2008 Pb, 2010 NO_2, 2010 SO_2, and 2006 and 2012 $PM_{2.5}$ NAAQS. The EPA is disapproving element 4 of CAA section 110(a)(2)(D)(i)(II) for the 2008 ozone, 2010 NO_2, 2010 SO_2, and 2006 and 2012 $PM_{2.5}$ NAAQS. Finally, the EPA is approving SIP revisions the State submitted to update Montana's PSD program and provisions regarding state boards.

DATES: This rule is effective on May 20, 2016.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2013–0556. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. The EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Abby Fulton, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, 303–312–6563, *fulton.abby@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Infrastructure requirements for SIPs are provided in section 110(a)(1) and (2) of the CAA. Section 110(a)(2) lists the specific infrastructure elements that a SIP must contain or satisfy. The elements that are the subject of this action are described in detail in our proposed rulemaking (NPR) published on January 26, 2016 (81 FR 4225).

In our NPR, the EPA proposed to approve, conditionally approve, take no action on, and disapprove infrastructure elements for the 2008 Pb, 2008 ozone, 2010 NO_2, 2010 SO_2 and 1997, 2006 and 2012 $PM_{2.5}$ NAAQS from the State's certifications. In this rulemaking, we are taking final action to approve infrastructure elements from the State's certifications. We are also conditionally approving elements (C), D(i)(II) element 3 and (J) with respect to the requirement to have a PSD program that meets the requirements of part C of Title 1 of the Act. The EPA is taking final action to disapprove (D)(i)(II) element 4 for the 2006 $PM_{2.5}$, 2008 ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS. We are also taking final action to approve revisions to the Administrative Rules of Montana (ARM) from the August 21, 2012 submittal and conditionally approve a revision from the March 24, 2015 submittal to bring Montana's PSD program up to date with respect to current requirements for $PM_{2.5}$. In this action, we are taking final action to approve new ARM and sections of the Montana Code Annotated submitted on December 17, 2015 to satisfy requirements of element (E)(ii), state boards.

II. Response to Comments

We received two comment letters during the public comment period. One comment letter was submitted anonymously and the other by Andrea Issod from the Sierra Club Environmental Law Program (Sierra

Club) and Anne Hedges from the Montana Environmental Information Center (MEIC). We also received a request for comment period extension from Andrea Issod from the Sierra Club. The EPA contacted the commenter and after a short discussion, the commenter decided not to follow through with their extension request.

Comment 1: The EPA cannot approve the PSD portions of all these Infrastructure SIPs until EPA has finally approved the Class I and Class II $PM_{2.5}$ increments into the Montana SIP. I appreciate EPA's efforts to address this issue.

Response: We agree with the commenter that adoption of $PM_{2.5}$ increments is a necessary requirement when assessing a state's PSD program for the purposes of CAA Section 110(a)(2)(C), (D)(i)(II) element 3, and (J). In this action, we are approving the necessary portions of Montana's August 21, 2012 submission to satisfy the requirements of the October 20, 2010 rule, "Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC)" (75 FR 64864). Montana adopted 40 CFR 51.166(c)(1), which includes Class I and Class II increments, into ARM 17.8.804(1). By meeting this structural requirement for the PSD program in its SIP, the State has also met the relevant Infrastructure SIP elements relevant to the PSD program. Accordingly, the EPA concludes that the issue identified by the commenter has been properly addressed.

Comment 2: The Sierra Club and Montana Environmental Information Center (MEIC) Comment Letter states the following on pages 2, 3, 26 and 27:

> Sierra Club and Montana Environmental Information Center (MEIC) submit to EPA that the Montana PSD program as implemented by MTDEQ fails to require PSD permits for all modified major sources that are required to be covered under the SIP PSD permitting program pursuant to 40 CFR 51.166, due to MTDEQ's policy interpretations of its PSD program that result in rules that are less stringent and thus less inclusive than the federal PSD program. Further, because the MTDEQ's implementation of the Montana PSD program does not cover all PSD-subject modified major sources, MTDEQ's implementation of its PSD program also fails to cover all regulated [New Source Review] NSR pollutants including GHG pollutants for which the PSD permitting requirements only apply to "anyway sources," *i.e.,* sources that would otherwise be subject to PSD permitting for other pollutants.
>
> MTDEQ is following policy interpretations that differ from its EPA-approved PSD rule incorporated into the Montana SIP (which tracks EPA's 1980 PSD regulations) and as a result, Montana's implementation of the PSD program is less inclusive and less stringent than the 1980 federal PSD rules because it fails to include all physical or operational changes that would be major modifications under the federal PSD requirements. Further, MTDEQ's policy interpretations mean that its implementation of the PSD program is less stringent than the 2002 NSR Reform Rules promulgated by EPA on December 31, 2002 (67 Fed. Reg. 80186), as amended by EPA on June 13, 2007 (72 Fed. Reg. 32526) for physical or operational changes at existing major sources.
>
> Although EPA has stated in the proposed approval of the Montana infrastructure SIP approval that it "does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP" including existing provisions of the state's PSD program that may be inconsistent with the current federal PSD rules reflecting NSR Reform, EPA has no basis for attempting to limit public comment and EPA review of this issue when a state's policy interpretations of its PSD program result in a program that is less inclusive and less stringent than the current federal PSD program, and is therefore contrary to law.
>
> * * * * *
>
> EPA cannot assume that Montana's minor source permitting program will ensure protection of these NAAQS for those modified sources that, pursuant to MTDEQ's policy interpretations, do not trigger applicability under the Montana PSD program as major modifications. The Montana SIP includes an exemption from the requirement to obtain a Montana Air Quality Permit for "construction or changed conditions of operation" at a facility that does not increase the facility's potential to emit by more than 5 tons per year. ARM 17.8.743(1), ARM 17.8.745 "Exclusion for De Minimis Changes." This rule allows a source to apply an emissions test comparing potential to emit pre- and post-change, and if the increase in potential to emit is less than 5 tons per year, no Montana Air Quality Permit is required for the construction or changed operation. For those modifications to existing major sources that do not trigger PSD based on MTDEQ's policy interpretations allowing the source to use an actual emissions to [an] estimated future actual emissions test, it is likely that such a modified source could avoid the requirement to obtain a Montana Air Quality permit under the potential-to[-]potential comparison of the de minimis exemption in Montana's SIP. Even if a modified major source could not initially be exempt under the potential-to-potential test of the Montana de minimis rule, the Montana rule also allows an existing source to revise the federally enforceable emission limitations (thus reducing its potential to emit) through an administrative process pursuant to ARM 17.8.764 (see ARM 17.8.745(1)(a)(5) and (2).
>
> While the de minimis rule does not allow construction or changed conditions that would affect the plume rise or dispersion characteristics of emissions in a manner that would cause or contribute to a NAAQS violation (see ARM 17.8.745(1)(a)(iii)), this provision will not ensure protection of the NAAQS due to emissions from the modified major sources that avoid PSD permitting due to MTDEQ's policy interpretations. To determine if a modified source will cause or contribute to a violation of the NAAQS, the de minimis rule requires notification to MTDEQ if the physical or operational change will change stack height, stack diameter, stack flow, stack gas temperature, or source location, but it does not require ambient air modeling. ARM 17.8.745(b). However, given that the majority of existing sources have never been modeled for compliance with the recent NAAQS for lead, ozone, 1-hour NO_2, 1-hour SO_2, or $PM_{2.5}$ NAAQS, it will be extremely difficult for MTDEQ to determine that a change in stack parameters or source location would cause or contribute to a violation of the NAAQS. Further, it is not evident that MTDEQ always requires submittal of such information to determine if construction or changed operating conditions at an existing source would affect the plume rise or dispersion characteristics of a modified source, given that MTDEQ allows certain emission sources to be excluded from notification requirements of the de minimis rule pursuant to ARM 17.8.745(c).

Response: The commenters' concerns are directed not to whether the existing SIP for Montana meets the relevant structural requirements for PSD programs, but rather to whether Montana is in fact faithfully implementing the existing provisions of its EPA-approved SIP. As the EPA has explained in other contexts, comments like these highlight an important distinction between whether an infrastructure SIP submission meets the applicable requirements of the CAA on its face (*i.e.,* pertain to the facial sufficiency of the state's SIP), and whether a state is actually complying with the requirements of that SIP (*i.e.,* pertain to adequacy of the state's implementation of the SIP).[1] These comments implicate the question of the degree to which implementation concerns are relevant in the context of acting on a state's infrastructure SIP. In the context of an infrastructure SIP submission, the EPA interprets the requirements of section 110(a)(1) and (2) to require the Agency to focus on whether the state has a SIP that provides the requisite legal framework for implementation, maintenance and enforcement of the NAAQS. Generally speaking, the EPA's review of infrastructure SIP submissions is limited to whether, pursuant to CAA section 110(a)(2), the submission facially meets the requirements of the statutory criteria outlined therein, as applicable. In the case of section 110(a)(2)(C), for example, the statute requires a state to have a SIP that "include[s] a program to provide for . . . regulation of the modification and construction of any stationary sources . . . including a permit program as required in parts C and D of this subchapter." Thus, the EPA reviews a state's infrastructure SIP submission to assure that the structural elements of the state's PSD permitting program meets current CAA requirements for such programs, *e.g.*, that it addresses GHG emissions.

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[1] See "Approval and Disapproval and Promulgation of Implementation Plans; Texas; Infrastructure and Interstate Transport Requirements of the 1997 Ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS," 76 FR 81371 (Dec. 28, 2011).

This is not to say that the EPA has no role in reviewing whether a state is faithfully implementing its approved SIP, or otherwise complying with the CAA and its implementing regulations. To the contrary, there are multiple statutory tools that the EPA can use to rectify problems with state implementation of its SIP, and the existence of these tools is consistent with the EPA's interpretation of section 110(a)(2) with respect to the Agency's role in reviewing infrastructure SIP submissions. For example, the CAA provides the EPA the authority to issue a SIP call, 42 U.S.C. 7410(k)(5); make a finding of failure to implement, *id.* §§ 7410(m), 7509(a)(4); and take measures to address specific permits pursuant to the EPA's case-by-case permitting oversight. *See, e.g.,* § 7661d(b). The appropriateness of employing these authorities depends on the nature and extent of the particular implementation problems at issue.

With respect to Montana's infrastructure SIP submission, the EPA analyzed the submission itself, and evaluated the text of its provisions for compliance with the relevant elements of section 110(a)(2). In the proposal, the EPA explicitly evaluated the State's submission on a requirement-by-requirement basis and explained its views on the adequacy of the State's SIP for purposes of meeting the infrastructure SIP requirements.

The EPA appreciates and takes seriously the commenters' assertions that Montana has adopted "policy interpretations" outside the context of the SIP that may undermine the State's implementation of the SIP as approved by the EPA. However, because this action involves a review of the SIP itself, the EPA is not evaluating the merits of these assertions concerning implementation of the SIP in the context of this action. Instead, the EPA intends to evaluate the merits of these assertions, separate from this action, at a future time. In the meantime, the EPA is finalizing its proposed approval of the infrastructure SIP submission that is currently before the Agency. If the EPA later determines that there are indeed concerns with respect to the implementation of the PSD program in Montana, the Agency intends to take appropriate action to ensure those problems are rectified using whatever statutory tools are appropriate to the implementation problem identified.

With respect to the requirements related to PSD relevant to this approval of the infrastructure SIP submission, the EPA has determined that the State's SIP as previously approved, and as revised in this action, meets the relevant structural requirements for purposes of PSD in section 110(a)(2)(C), (D)(i)(II) element 3, and (J). Some examples of these basic structural SIP requirements include having state law authority to carry out the SIP, an overarching permitting program in place, and a properly deployed monitoring network. As to the PSD program in particular, these basic structural requirements include those provisions necessary for the permitting program to address all federally regulated pollutants and the proper sources. The EPA considers action on the infrastructure SIP submissions required by section 110(a)(1) and (2) to be an evaluation of a state's SIP to assure that it meets the basic structural requirements for the new or revised NAAQS, not a time to address all potential substantive defects in existing SIP provisions, or alleged defects in implementation of the SIP. [Therefore, EPA generally considers evaluations of a state's implementation of its NSR program to be outside the scope of an infrastructure SIP review, rather than an unambiguous requirement of the EPA's action on an infrastructure SIP with regard to section 110(a)(2)(C).]

Comment 3: The Sierra Club and MEIC comment letter gives a history of the Montana PSD program as well as a history of the corresponding federal PSD program with respect to how it is determined whether a physical or operational change at an existing major stationary source is subject to PSD permitting requirements. The comment discusses MTDEQ's policy interpretations recently set forth in a citizen suit enforcement proceeding, stating that these interpretations "make Montana's implementation of the PSD program less stringent". The Sierra Club and MEIC Comment Letter states the following on pages 4 and 5:

> The basic structure of Montana's PSD permitting rules has been the same since the EPA's initial SIP approval of Montana's PSD rules. Specifically, Montana's PSD rules define the applicability to PSD for physical or operational changes at an existing source based on the same regulatory language in EPA's PSD regulations as of 1980. That is, to determine if a physical change or change in the method of operation at an existing major source is subject to PSD as a major modification, one evaluates changes in 'actual emissions [.]

The comment evaluates the definition of "actual emissions" and how Montana's SIP has defined this term over the years, and notes two substantive revisions to the definition of "actual emissions" since 1980, stating on pages 6, 7, and 8:

> The first revision was made in 1992, where EPA modified the definition of "actual emissions" to allow electric utility steam generating units (EGUs) to use the "representative actual annual emissions," and adopted associated definitions including of "representative actual annual emissions" and emissions reporting provisions for EGUs. 57 Fed. Reg. 32314 at 32335–6 (July 21, 1992); 40 CFR 51.166(b)(21)(iv) and (v), (b)(30), and (b)(32). In addition, although EPA did not adopt any regulatory revisions regarding the actual emissions baseline before a physical or operational change, EPA set forth a presumption that it considers any 2 year period in the 5 years immediately preceding the physical or operational change at an EGU to be representative of normal source operations for the EGU. 57 Fed. Reg. 32325. The 1992 rulemaking is referred to as the "WEPCO Rule" because the rule changes came about as a result of the 7th Circuit Court decision in *Wisconsin Electric Power Co.* v. *Reilly,* 893 F.2d 901 (7th Cir. 1990) ("WEPCO Decision").
>
> A review of the current SIP-approved Montana rules show that Montana did not revise its PSD regulations to incorporate any of the regulatory changes of the 1992 WEPCO rulemaking.
>
> In 2002, EPA again revised the definition of "actual emissions" and adopted new terms and definitions of "projected actual emissions" and "baseline actual emissions" along with numerous other revisions to its PSD regulations. 67 Fed. Reg. 80186–80289 (Dec 31, 2002, also known as "NSR Reform" Rule). EPA adopted a two-step process for determining PSD applicability for physical or operational changes. First, it must be determined if a project will result in a significant emission increase of any regulated NSR pollutant and, if so, then second, it must be determined if the project will result in a significant net emissions increase of any regulated NSR pollutant. 67 Fed. Reg. 80260; 40 CFR 51.166(a)(7)(iv)(a)–(f). EPA essentially allowed all sources (not just EGUs as allowed in 1992) to use an actual-to-projected actual emissions increase test to determine whether a physical or operational change was a major modification, except in certain circumstances such as when a new emissions unit is added. 67 Fed. Reg. 80260–2; 40 CFR 51.166(a)(7)(iv)(a)–(f), (b)(40) and (b)(47).
>
> In the NSR Reform rules, EPA adopted several new rules. EPA adopted a new definition of "baseline actual emissions" which codified the 2-in-5 year presumptive baseline that EPA announced in the 1992

WEPCO rule for EGUs, and also promulgated a provision for non-EGUs allowing them to look back ten years before a physical or operational change in determining baseline emissions. 67 Fed. Reg. 80263–4; 40 CFR 51.166(b)(47). EPA also adopted a new definition of "projected actual emissions" which defines how modified sources are to project actual emissions when such modifications are not subject to the actual-to-potential to emit test pursuant to the procedures identified in 40 CFR 51.166(a)(7)(iv)(a)–(f). 67 Fed. Reg. 80262–3; 40 CFR 51.166(b)(40). In addition, EPA adopted provisions for reporting to permitting authorities pre- and post-project when there is a reasonable possibility that a project that is not considered a major modification may result in a significant emissions increase. 67 Fed. Reg. 80264; 40 CFR 51.166(r)(6) and (r)(7). There were numerous other revisions to the federal permitting rules adopted in the December 31, 2002 rulemaking, such as requirements to establish PALs. Two other new provisions of the 2002 NSR Reform rule regarding pollutant control projects and clean units were later eliminated from the PSD regulations, after being vacated by the U.S. Court of Appeals for the D.C. Circuit in *New York* v. *EPA*, 413 F. 3d 3 (D.C. Cir. 2005). 72 Fed. Reg. 32526–9 (June 13, 2007). A review of the EPA-approved SIP for Montana shows that Montana did not adopt any of the 2002 New Source Review Reform revisions as revisions to its PSD regulations.

Although EPA has made some revisions to its rules regarding baseline emissions and how to project future emissions for physical or operational changes at existing sources, it is clear that, since 1986, the Montana SIP has continued to have the same definition of "actual emissions" and the same applicability approach as applied under EPA's 1980 PSD rules. On its face, Montana's PSD rules track EPA's PSD rules as they existed in 1980, and Montana's rules do not implement the 1992 or 2002 federal rule revisions. Given that the 1992 and 2002 federal rule revisions were intended to be less inclusive than the 1980 PSD rule, allowing for more modifications to not be considered as major modifications subject to PSD review, would be less stringent than the current federal PSD rules.

Montana is implementing policy interpretations regarding the definition of "actual emissions," which pertain to both the determination of actual emissions before a physical or operational change and the determination of the future emissions expected after a physical or operational change, which are less stringent than EPA's interpretation of the same language of its 1980 PSD rules, resulting in Montana's program as implemented being less stringent than EPA's 1980 PSD requirements. In addition, those policy interpretations of Montana's PSD program are less stringent than EPA's current PSD requirements reflective of NSR Reform."

Response: The commenter's assertion that Montana is, through policy interpretations, implementing its PSD program in a less-stringent manner than required by PSD rules is addressed in our response to comment 2. We note that, while Montana's alleged "policy interpretations" of its SIP are outside the scope of the EPA's review in the context of an infrastructure SIP submission, we evaluated the "structural" requirements for a PSD program to fulfill the NAAQS infrastructure requirements as required in 110(a)(2)(C), (D)(i)(II) element 3, and (J). In the context of the specific applicability issues raised by the commenter, we have determined that Montana's PSD program provides for the implementation, maintenance, and enforcement of the NAAQS requirements being approved in this rulemaking by applying the EPA's 1980 PSD rules. In addition, EPA has evaluated the State's SIP for compliance with other structural elements such as the Phase 2 Ozone Implementation Rule, 2008 $PM_{2.5}$ NSR, and 2010 $PM_{2.5}$ Increments (a complete discussion can be found in section VI. *Program for enforcement of control measures* of the proposed rule).

While we agree with the history the commenter has provided with regard to what Montana has and has not adopted into the State's EPA-approved PSD program, we note that Montana was not *required* to adopt any of the provisions of the 1992 WEPCO Rule. For example, the state of Utah adopted WEPCO revisions, which we acted on in 69 FR 51368 (Aug. 19, 2004). In that rulemaking, we explained that states generally: "were not required to adopt revisions to implement these changes, although these changes are in effect in areas where the Federal PSD permitting regulations apply. Utah has opted to revise its NSR program to incorporate the changes to the EPA's NSR rules promulgated on July 21, 1992."

We note that the commenter agrees with this premise. *See, e.g.,* Sierra Club and MEIC Comment Letter at page 16 (stating that "states were not required to adopt that new rule language" in reference to the 1992 WEPCO Rule). Because Montana was not required to adopt the 1992 WEPCO Rule, or to revise its SIP in response to that EPA action, the EPA need not review the state's infrastructure SIP submission for consistency with the requirements of the 1992 WEPCO Rule. In the context of evaluating a state's infrastructure SIP submission with respect to PSD permitting program requirements, the EPA evaluates only whether the SIP meets structural requirements (*e.g.,* having authority to address GHG emissions in such permits). Thus, the State's decision whether or not to revise its PSD permitting program to incorporate the changes contemplated in the 1992 WEPCO Rule does not preclude the EPA from approving Montana's infrastructure SIP in this action.

This is consistent with the EPA's September 13, 2013, "Guidance on Infrastructure State Implementation Plan (SIP) Elements Under Clean Air Act Sections 110(a)(1) and 110(a)(2),"[2] (2013 Guidance, contained within this docket), wherein we explain that: "Structural PSD program provisions include provisions necessary for the PSD program to address all regulated sources and NSR pollutants, including GHG. Structural PSD provisions do not include provisions which under 40 CFR 51.166 are at the option of the air agency."

In the EPA's 2013 Guidance and in several EPA rulemakings, the Agency discussed the issue of addressing the 2002 NSR Reform Rule, which followed the 1992 WEPCO Rule, within the context of infrastructure SIPs. Specifically, the EPA explained in the 2013 Guidance that the issue of "existing SIP provisions for PSD programs that have not addressed the NSR Reform Rules may be dealt with separately, outside of the context of acting on a state's infrastructure SIP."[3] The EPA explained its reasoning for this approach to the NSR Reform Rules in a 2007 guidance document,[4] which we further explained in our July 13, 2011 rulemaking (76 FR 41078. *See* page 41078, column three, first full paragraph through page 41079, first column).

Comment 4 Sierra Club and MEIC Comment Letter

The comment asserts that Montana's "policy interpretations" of the term "actual emissions" as set forth in amicus briefs and appearances in a citizen suit PSD enforcement action against the Colstrip Power Plant are inconsistent and less stringent than the EPA's interpretation of the same language in the 1980 federal PSD regulations and are less stringent than the current federal PSD regulations. The comment also states that MTDEQ's interpretation of how to determine baseline emissions is inconsistent with and less stringent than the EPA's historical and current PSD regulations. The comment states that the MTDEQ never informed the public of its policy interpretations set forth in the amicus briefs, and Montana does not have authority to implement policy without going through rulemaking.

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[2] Memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, Guidance on Infrastructure State Implementation Plan (SIP) Elements Under the Clean Air Act Sections 110(a)(1) and 110(a)(2) (Sept. 13, 2013).

[3] 2013 Guidance at p. 28.

[4] "Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards," from William T. Harnett, Director Air Quality Policy Division, to Air Division Directors, Regions I–X (October 2, 2007).

Response: In our response to comment 2, we discussed the difference between the legal sufficiency and the structural requirements of a PSD program within the context of evaluation of the infrastructure SIP submission and the *implementation* of the EPA approved SIP. The commenter's assertion that Montana's PSD regulations are less stringent than the 1980 federal PSD regulations and the current federal PSD regulations is based upon allegations concerning how Montana *interprets* federal PSD regulations and the State's own "policy interpretations." As mentioned in our response to comment 2, these implementation concerns fall outside the scope of this action because the EPA is not evaluating the issue of how the state implements its PSD program in this context. In that same vein, the EPA does not consider this the appropriate context in which to evaluate whether MT DEQ's interpretations of PSD applicability tests, or how the State defines "actual emissions" or "like-kind replacements," etc., and whether these interpretations make Montana's PSD program less stringent than the 1980 federal PSD regulations and the current federal PSD regulations. As noted in our response above, the EPA has other authorities to take appropriate action to address alleged SIP implementation deficiencies.

III. Final Action

For reasons expressed in the proposed rule, the EPA is taking final action to approve infrastructure elements from the State's certifications as shown in Table 1. We are also conditionally approving elements (C), D(i)(II) element 3 and (J) with respect to the requirement to have a PSD program that meets the requirements of part C of Title 1 of the Act as shown in Table 2. Elements we are taking no action on are reflected in Table 4. The EPA is disapproving (D)(i)(II) element 4 for the 2006 PM$_{2.5}$, 2008 ozone, 2010 NO$_2$, 2010 SO$_2$, and 2012 PM$_{2.5}$ NAAQS (Table 3). Finalization of this disapproval does not require further action from the State, and does not create a new FIP obligation for the EPA. We are also approving revisions to the ARM from the August 21, 2012 submittal (Table 1) and conditionally approving a revision from the March 24, 2015 submittal (Table 2) to bring Montana's PSD program up to date with respect to current requirements for PM$_{2.5}$. If Montana does not submit a SIP revision to correct the language in ARM 17.8.818(7)(a)(iii) within one year of this action, conditional approvals will automatically revert to disapprovals for ARM 17.8.818(7)(a)(iii), and elements (C), D(i)(II) element 3 and (J) with respect to PSD requirements. Finally, we are approving new ARM and sections of the Montana Code Annotated submitted on December 17, 2015 to satisfy requirements of element (E)(ii), state boards.

A comprehensive summary of infrastructure elements, and revisions and additions to the ARM organized by the EPA's final rule action are provided in Table 1, Table 2, Table 3 and Table 4.

TABLE 1—LIST OF MONTANA INFRASTRUCTURE ELEMENTS AND REVISIONS THAT THE EPA IS APPROVING

Approval
February 10, 2010 submittal—1997 and 2006 PM$_{2.5}$ NAAQS: (D)(ii) for both the 1997 and 2006 PM$_{2.5}$ NAAQS.
December 19, 2011 submittal—2008 Pb NAAQS: (A), (B), (C) with respect to minor NSR requirements, (D)(i)(I) elements 1 and 2, (D)(i)(II) element 4, (D)(ii), (E), (F), (G), (H), (J) with respect to requirements of sections 121 and 127, (K), (L) and (M).
January 3, 2013 submittal—2008 Ozone NAAQS: (A), (B), (C) with respect to minor NSR requirements, (D)(ii), (E), (F), (G), (H), (J) with respect to requirements of sections 121 and 127, (K), (L) and (M).
June 4, 2013 submittal—2010 NO$_2$ NAAQS: (A), (B), (C) with respect to minor NSR requirements, (D)(i)(I) elements 1 and 2, (D)(ii), (F), (G), (H), (J) with respect to requirements of sections 121 and 127, (K), (L) and (M).
July 15, 2013 submittal—2010 SO$_2$ NAAQS: (A), (B), (C) with respect to minor NSR requirements, (D)(ii), (F), (G), (H), (J) with respect to requirements of sections 121 and 127, (K), (L) and (M).
December 17, 2015 submittal—2012 PM$_{2.5}$ NAAQS: (A), (B), (C) with respect to minor NSR requirements, (D)(ii), (F), (G), (H), (J) with respect to requirements of sections 121 and 127, (K), (L) and (M).
August 21, 2012 submittal—Revisions to ARM, Prevention of Significant Deterioration: ARM 17.8.801(3), 17.8.801(21), 17.8.801(27), 17.8.804(1), 17.8.818(7)(a)(iv)–(xi), 17.8.822(9), 17.8.822(10), 17.8.822(11), 17.8.822(12) and 17.8.825(4).
December 17, 2015 submittal—New Rules to ARM, CAA Section 128 New Rule I (ARM 17.8.150), II (ARM 17.8.151), III (ARM 17.8.152), and Montana Code Annotated 2–2–121(2)(e) and 2–2–121(8).

TABLE 2—LIST OF MONTANA INFRASTRUCTURE ELEMENTS AND REVISIONS THAT THE EPA IS CONDITIONALLY APPROVING

Conditional approval
February 10, 2010 submittal—1997 and 2006 PM$_{2.5}$ NAAQS: (D)(i)(II) element 3 for the 2006 PM$_{2.5}$ NAAQS.
December 19, 2011 submittal—2008 Pb NAAQS: (C) and (J) with respect to PSD, and (D)(i)(II) element 3.
January 3, 2013 submittal—2008 Ozone NAAQS: (C) and (J) with respect to PSD, and (D)(i)(II) element 3.
June 4, 2013 submittal—2010 NO$_2$ NAAQS: (C) and (J) with respect to PSD, and (D)(i)(II) element 3.
July 15, 2013 submittal—2010 SO$_2$ NAAQS: (C) and (J) with respect to PSD, and (D)(i)(II) element 3.

TABLE 2—LIST OF MONTANA INFRASTRUCTURE ELEMENTS AND REVISIONS THAT THE EPA IS CONDITIONALLY APPROVING—Continued

Conditional approval
December 17, 2015 submittal—2012 $PM_{2.5}$ NAAQS:
(C) and (J) with respect to PSD, and (D)(i)(II) element 3.
March 24, 2015 submittal—Revisions to ARM, Prevention of Significant Deterioration:
ARM 17.8.818(7)(a)(iii).

TABLE 3—LIST OF MONTANA INFRASTRUCTURE ELEMENTS THAT THE EPA IS DISAPPROVING

Disapproval
February 10, 2010 submittal—1997 and 2006 $PM_{2.5}$ NAAQS:
(D)(i)(II) element 4 for the 2006 $PM_{2.5}$ NAAQS.
January 3, 2013 submittal—2008 Ozone NAAQS:
(D)(i)(II) element 4.
June 4, 2013 submittal—2010 NO_2 NAAQS:
(D)(i)(II) element 4.
July 15, 2013 submittal—2010 SO_2 NAAQS:
(D)(i)(II) element 4.
December 17, 2015 submittal—2012 $PM_{2.5}$ NAAQS:
(D)(i)(II) element 4.

TABLE 4—LIST OF MONTANA INFRASTRUCTURE ELEMENTS AND REVISIONS THAT THE EPA IS TAKING NO ACTION ON

No action				
	Reason "No Action"			
Revised section	Revision to be made in future rulemaking action	Revision made in a separate rulemaking action (80 FR 72937)	Revision deletes section of the ARM never approved into State's SIP	Revision superseded by revision in March 24, 2015 State submittal
January 3, 2013 submittal—2008 Ozone NAAQS:				
(D)(i)(I) elements 1 and 2		x		
July 15, 2013 submittal—2010 SO_2 NAAQS:				
(D)(i)(I) elements 1 and 2	x			
December 17, 2015 submittal—2012 $PM_{2.5}$ NAAQS:				
(D)(i)(I) elements 1 and 2	x			
August 21, 2012 submittal—Revisions to ARM, Prevention of Significant Deterioration:				
ARM 17.8.818(7)(a)(iii)				x
ARM 17.8.820(2)				x
March 24, 2015 submittal—Revisions to ARM, Prevention of Significant Deterioration:				
ARM 17.8.820(2)			x	

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the ARM and Montana Code Annotated discussed in section III, *Final Action* of this preamble. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

V. Statutory and Executive Orders Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations (42 U.S.C. 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this final action merely approves some state law as meeting federal requirements; this final action does not impose additional requirements beyond those imposed by state law. For that reason, this final action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, Oct. 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive

Order 13132 (64 FR 43255, Aug. 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, Feb. 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 20, 2016. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Greenhouse gases, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 30, 2016.

Debra H. Thomas,

Acting Regional Administrator, Region 8.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart BB—Montana

■ 2. Section 52.1370 is amended by:

■ a. In paragraph (c) adding in numerical order, the table entries for "17.8.150", "17.8.151", and "17.8.152"; and revising the table entries for "17.8.801", "17.8.804", "17.8.818", "17.8.822", and "17.8.825"; and

■ b. In paragraph (e), under "(1) Statewide" adding three entries at the end of the table.

The revisions and additions read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

State citation	Rule title	State effective date	EPA final rule date	Final rule citation	Comments
(1) Statewide					
(i) Administrative Rules of Montana, Subchapter 01, General Provisions					
*	*	*	*	*	*
17.8.150	Definitions	10/30/2015	4/20/2016	[Insert **Federal Register** citation].	
17.8.151	Board Action	10/30/2015	4/20/2016	[Insert **Federal Register** citation].	
17.8.152	Reporting	10/30/2015	4/20/2016	[Insert **Federal Register** citation].	
(vi) Administrative Rules of Montana, Subchapter 08, Prevention of Significant Deterioration of Air Quality					
*	*	*	*	*	*
17.8.801	Definitions	10/14/2011	4/20/2016	[Insert **Federal Register** citation].	
17.8.804	Ambient Air Increments	10/14/2011	4/20/2016	[Insert **Federal Register** citation].	
17.8.818	Review of Major Stationary Source and Major Modifications—Source Applicability and Exemptions.	10/10/2014	4/20/2016.	[Insert **Federal Register** citation].	
17.8.822	Air Quality Analysis	10/14/2011	4/20/2016	[Insert **Federal Register** citation].	
17.8.825	Sources Impacting Federal Class I Areas—Additional Requirements.	10/14/2011	4/20/2016	[Insert **Federal Register** citation].	

State citation	Rule title	State effective date	EPA final rule date	Final rule citation	Comments
*	*	*	*	*	*

* * * * *

(e) * * *

Title/subject	State effective date	Notice of final rule date	NFR citation
(1) Statewide			
*	*	*	*
Infrastructure Requirements for the 2008 Lead, 2008 8-hour Ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ National Ambient Air Quality Standards.	N/A	4/20/2016	[Insert **Federal Register** citation].
Infrastructure Requirements, Interstate Transport of Pollution 110(a)(2)(D)(ii) for the 1997 and 2006 $PM_{2.5}$ NAAQS.	N/A	4/20/2016	[Insert **Federal Register** citation].
Montana Code Annotated 2–2–121(2)(e) and 2–2–121(8)	N/A	4/20/2016	[Insert **Federal Register** citation].
*	*	*	*

* * * * *

[FR Doc. 2016–08916 Filed 4–19–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2014–0492; FRL–9945–34–OAR]

RIN 2060–AR97

Clarification of Requirements for Method 303 Certification Training

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Because the Environmental Protection Agency (EPA) received adverse comment, we are withdrawing the direct final rule for Clarification of Requirements for Method 303 Certification Training, published on February 25, 2016.

DATES: Effective April 20, 2016, the EPA withdraws the direct final rule published at 81 FR 9350, on February 25, 2016.

FOR FURTHER INFORMATION CONTACT: Ms. Kim Garnett, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Measurement Technology Group (Mail Code: E143–02), Research Triangle Park, NC 27711; telephone number: (919) 541–1158; fax number: (919) 541–0516; email address: *garnett.kim@epa.gov.*

SUPPLEMENTARY INFORMATION: Because the EPA received adverse comment, we are withdrawing the direct final rule for Clarification of Requirements for Method 303 Certification Training, published on February 25, 2016 (81 FR 9350). We stated in that direct final rule that if we received adverse comment by March 28, 2016, the direct final rule would not take effect and we would publish a timely withdrawal in the **Federal Register**. We subsequently received adverse comment on that direct final rule. We will address those comments in any subsequent final action, which will be based on the parallel proposed rule also published on February 25, 2016 (81 FR 9407). As stated in the direct final rule and the parallel proposed rule, we will not institute a second comment period on this action.

Dated: April 14, 2016.

Janet G. McCabe,

Acting Assistant Administrator.

[FR Doc. 2016–09157 Filed 4–19–16; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 81, No. 76
Wednesday, April 20, 2016

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 56

[Doc. No. AMS–LPS–15–0044]

Amendment to the Definition of "Condition" and Prerequisite Requirement for Shell Eggs Eligible for Grading and Certification Stated in the Regulations Governing the Voluntary Grading of Shell Eggs

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) proposes to amend the Regulations Governing the Voluntary Grading of Shell Eggs to clarify the definition of "condition" and revise the prerequisite requirement for shell eggs eligible for voluntary USDA grading and certification. The proposed revision to the prerequisite requirement will prohibit the use of *Salmonella* Enteritidis-adulterated or recalled shell eggs from being presented to USDA for grading and certification. AMS is proposing to revise the definition of "condition" to remove any food safety implications resulting from the use of the term "wholesomeness" and clarify that AMS' role in grading and certification of shell eggs is solely for a quality determination.

DATES: Comments must be received by June 20, 2016.

ADDRESSES: Interested persons are invited to submit comments concerning this proposed rule electronically at *http://www.regulations.gov.* Written comments may also be submitted to Mark Perigen, National Shell Egg Supervisor, Quality Assessment Division (QAD), Livestock, Poultry, and Seed Program, Agricultural Marketing Service, U.S. Department of Agriculture, Stop 0258, Room 3932S, 1400 Independence Avenue SW., Washington, DC 20250; or by facsimile to (202) 690–2746. All comments should reference the docket number (AMS–LPS–15–0044), the date, and the page number of this issue of the **Federal Register**. Submitted comments will be available for public inspection at *http://www.regulations.gov,* or during regular business hours at the above address. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: David Bowden, Chief, Standardization Branch, Quality Assessment Division, Livestock, Poultry, and Seed Program, Agricultural Marketing Service, U.S. Department of Agriculture, Stop 0258, Room 3932S, 1400 Independence Avenue SW., Washington, DC 20250; by facsimile to (202) 690–2746; or via email *David.Bowden@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background and Proposed Changes

Section 203(c) of the Agricultural Marketing Act of 1946 (AMA) (7 U.S.C. 1621–1627) directs and authorizes the Secretary of Agriculture "to develop and improve standards of quality, condition, quantity, grade and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices." The U.S. Department of Agriculture (USDA) is committed to carrying out this authority in a manner that facilitates the marketing of agricultural products while maintaining the integrity of the USDA grademark. Shell egg grading is a voluntary program provided under the AMA and offered on a fee-for-service basis. It is designed to assist in the orderly marketing of shell eggs by providing the official certification of egg quality, size, condition, and other factors.

This proposed amendment is in accordance with recommendations stated in the 2012 Audit Report, *USDA Controls Over Shell Egg Inspection,* issued by the USDA Office of Inspector General (OIG). In that report, OIG stated the regulatory definition of "condition" for shell eggs was confusing as it relates to quality and food safety. OIG also stated the integrity of the USDA grademark for quality was not adequately protected from adulterated shell eggs.

AMS is proposing to revise the definition of "condition" to remove any food safety implications resulting from the use of the term "wholesomeness" and clarify that AMS' role in grading and certification of shell eggs is solely for a quality determination. The revised definition will remove the term "wholesomeness" and state that "condition" is a characteristic detected by sensory examination. The presence of microorganisms, specifically *Salmonella* Enteritidis (SE) or other pathogens, in the content of an egg cannot be detected during such an examination. The Food and Drug Administration (FDA) and the USDA Food Safety and Inspection Service, not AMS, maintain jurisdiction for food safety related issues associated with shell eggs.

AMS is also proposing to revise the prerequisite requirement of shell eggs eligible for USDA grading and certification. The revision will prohibit the use of SE-adulterated or recalled shell eggs from being presented to USDA for grading and certification. This action protects the integrity of the USDA grademark for quality and is consistent with the current AMS policy implemented subsequent to the referenced 2012 OIG audit.

Executive Order 12866, 13175, and 13563

USDA is issuing this proposed rule in conformance with Executive Orders 12866, 13175, and 13563.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601–602, AMS has performed an initial regulatory flexibility analysis regarding economic effects of this proposed rule on small entities.

AMS is proposing to amend the Regulations Governing the Voluntary Grading of Shell Eggs, 7 CFR part 56 to revise the definition of the term "condition" to clarify that it relates solely to a quality determination and not food safety. The current regulation definition for "condition" includes the term "wholesomeness" which denotes a food safety connotation. AMS' role in grading and certification of shell eggs is for a quality determination only. By removing any food safety related terms from the current definition of "condition," AMS will remove confusion or misunderstanding over use of the term.

Since this change is a technical correction and editorial in nature, and will not result in a change to the way service is provided to our customers, AMS has determined it will not have a financial impact on small entities that utilize their services.

AMS also proposes to revise the prerequisite requirement of shell eggs eligible for USDA grading and certification. The revision will prohibit the use of SE-adulterated shell eggs or recalled shell eggs from being presented to USDA for grading and certification.

The FDA prohibits the use of SE-adulterated shell eggs from being sold to consumers. When shell eggs are suspected of being adulterated with SE, the packing facility is obligated to test the shell eggs to assure only safe product is distributed to consumers. If shell eggs are found to be adulterated with SE, the FDA will issue a request to the packing facility to voluntarily recall the product, or will exercise its mandatory recall authority to return the product to the origin facility. The product must either be destroyed or reconditioned under FDA supervision.

Since SE-adulterated shell eggs or shell eggs that have been recalled are no longer eligible for distribution to consumers, but are either destroyed or reconditioned under the direction of the FDA, changing the AMS regulation will not have an impact on small entities since those shell eggs are deemed unfit for human consumption.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection and recordkeeping requirements included in this proposed rule, and there are no new requirements. Should any changes become necessary they would be submitted to OMB for approval. The assigned OMB control number is 0581–0128, as approved on July 8, 2014.

AMS is committed to compliance with the Government Paperwork Elimination Act, which requires government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

E-Government Act

AMS is committed to complying with the E-Government Act of 2002 to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to government information and services, and for other purposes.

List of Subjects in 7 CFR Part 56

Agriculture, Eggs and egg products, Food grades and standards, Food labeling, Food packaging, Reporting and recordkeeping requirements, Voluntary standards.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 56 be amended as follows:

PART 56—REGULATIONS GOVERNING THE VOLUNTARY GRADING OF SHELL EGGS

■ 1. The authority citation for part 56 continues to read as follows:

Authority: 7 U.S.C. 1621 *et seq.*

■ 2. Amend § 56.1 by revising the definition of *Condition* to read as follows:

§ 56.1 Meaning of words and terms defined.

* * * * *

Condition means any characteristic detected by sensory examination (visual, touch, or odor), including the state of preservation, cleanliness, soundness, or fitness for human food that affects the marketing of the product.

* * * * *

■ 3. Amend § 56.40 by revising paragraphs (c)(2) and (3) and adding paragraphs (c)(4) and (5) to read as follows:

§ 56.40 Grading requirements of shell eggs identified with grademarks.

* * * * *

(c) * * *

(2) Not possess any undesirable odors or flavors;

(3) Not have previously been shipped for retail sale;

(4) Not originate from a layer house environment determined positive for the presence of *Salmonella* Enteritidis (SE) unless the eggs from the layer house have been sampled and have tested negative for the presence of SE in the eggs; and

(5) Not originate from eggs testing positive for SE, or not have been subject to a product recall.

* * * * *

Dated: April 14, 2016.

Elanor Starmer,

Administrator, Agricultural Marketing Service.

[FR Doc. 2016–09139 Filed 4–19–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 273

RIN 0584–AE43

Supplemental Nutrition Assistance Program: Standard Utility Allowances Based on the Receipt of Energy Assistance Payments Under the Agricultural Act of 2014

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise Supplemental Nutrition Assistance Program (SNAP) regulations in accordance with amendments made to the Food and Nutrition Act of 2008 (the Act) that requires States that elect to use a heating or cooling standard utility allowance (HCSUA) in SNAP eligibility determinations to make the HCSUA available to households that have received a payment under the Low-Income Home Energy Assistance Act of 1981 (LIHEAA) (known as a Low-Income Home Energy Assistance Program (LIHEAP) payment), or other similar energy assistance program payment, greater than $20 annually in the current month or in the immediately preceding 12 months.

DATES: Written comments must be received on or before June 20, 2016 to be assured of consideration.

ADDRESSES: The USDA Food and Nutrition Service invites interested persons to submit written comments on this proposed rule. Comments may be submitted in writing by one of the following methods:

- *Preferred Method: Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Send comments to Sasha Gersten-Paal, Branch Chief, Certification Policy Branch, Program Development Division, FNS, 3101 Park Center Drive, Alexandria, Virginia 22302, 703–305–2507.

All written comments submitted in response to this proposed rule will be included in the record and will be made available to the public. Please be advised that the substance of the comments and the identity of the individuals or entities submitting the comments will be subject to public disclosure. FNS will make the written comments publicly available on the Internet via *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Sasha Gersten-Paal, Branch Chief, Certification Policy Branch, Program Development Division, Food and Nutrition Service, 3101 Park Center Drive, Alexandria, Virginia 22302, 703–305–2507.

SUPPLEMENTARY INFORMATION:

Background

The Food and Nutrition Act of 2008, as amended, establishes uniform national eligibility standards for SNAP, including the definition of a SNAP household, countable income and assets, allowable deductions from gross income, and maximum benefit levels. Households are allowed to deduct certain amounts from their gross monthly income, including shelter expenses that exceed 50 percent of their income after all other deductions (up to a maximum limit for households that do not have elderly or disabled members). Household benefits are calculated based on the household's maximum allotment and net income; households with lower net incomes generally receive larger benefits than households with higher net incomes.

Shelter expenses include the basic cost of housing as well as utilities and other allowable expenses. In order to simplify program administration, States are permitted to establish Standard Utility Allowances (SUAs) that households may use in lieu of actual utility expenses. States may establish multiple SUAs to reflect differences in households' circumstances. The heating or cooling SUA (HCSUA) is one such SUA and is available to households that pay heating or cooling expenses separate from their rent or mortgage, as well as households that receive Low-Income Home Energy Assistance Program (LIHEAP) payments or other similar energy assistance program payments. Households that do not pay heating or cooling expenses out-of-pocket but that are billed directly for other utility costs are entitled to a SUA (or SUAs) appropriate to the types of utility expenses they incur, where applicable.

For the purposes of the HCSUA, receipt of a LIHEAP payment serves as a reasonable proxy for the actual utility costs that a household incurs, providing a simpler way for States and applicants to determine utility costs. Before the enactment of the Agricultural Act of 2014, Section 5(e)(6)(C)(iv) of the Act provided that all households receiving a LIHEAP payment or on behalf of which a LIHEAP payment was made automatically qualified for the HCSUA, regardless of the amount of the LIHEAP payment. Current regulations at 7 CFR 273.9(d)(6)(iii)(C) reflect this requirement.

Section 4006 of the Agricultural Act of 2014 amends Section 5(e)(6)(C)(iv)(I) of the Act by requiring States electing to use an HCSUA to make the HCSUA available to households that received a payment or on behalf of which a payment was made under the Low-Income Home Energy Assistance Act of 1981 or other similar energy assistance program, if in the current month or in the immediately preceding 12 months, the household either received such a payment or such a payment was made on behalf of the household that was greater than $20 annually.

This rule codifies guidance FNS issued to States following passage of the Agricultural Act of 2014. The Department is proposing to amend the regulations at 7 CFR 273.9(d)(6)(iii)(C) to incorporate these changes.

Other Similar Energy Assistance Program

Section 5(e)(6)(C)(iv)(I) of the Act, as amended by Section 4006 of the Agricultural Act of 2014, provides for the HCSUA upon receipt of LIHEAP payments as well as payments from an "other similar energy assistance program." The Department is also proposing to amend the regulations at 7 CFR 273.9(d)(6)(iii)(C) to establish a standard for determining what constitutes an "other similar energy assistance program." "[O]ther similar energy assistance program" would be defined as a separate home energy assistance program designed to provide heating or cooling assistance through a payment directly to or on behalf of low-income households.

For the purposes of this preamble discussion, the phrase "qualifying LIHEAP or other payment" refers to those LIHEAP or other similar energy assistance program payments that are in excess of $20 annually and have been received by or made on behalf of the household in the current or immediately preceding 12 months.

The language in the Act refers to LIHEAP or other similar energy assistance program payments received by or made "on behalf of" households, while the existing regulatory language refers to direct or indirect payments received by households. To support consistency, the Department proposes that the regulatory language reflect the statutory language.

Qualifying LIHEAP or Other Payment

Section 5(e)(6)(C)(iv)(I) of the Act, as amended by Section 4006 of the Agricultural Act of 2014, requires that the payment received by or made on behalf of the household must exceed $20 annually. The Department does not have discretion to alter the $20 threshold. However, standards regarding the payment would be important and helpful in order to ensure uniformity across State agencies. Therefore, the payment must be quantifiable in order to be acceptable for purposes of granting the HCSUA. By quantifiable, the Department means that the State agency must be able to quantify, in dollars, the amount of the payment. The Department is proposing to codify these requirements at revised 7 CFR 273.9(d)(6)(iii)(C)(1)(iii).

Section 5(e)(6)(C)(iv)(I) of the Act also requires receipt of the payment in the "current" month or the immediately preceding 12 months in order to confer eligibility for the HCSUA. As proposed, the "current month" refers strictly to the calendar month, meaning from the first to the final day of a given month.

On a related note, the Department proposes to revise language at 7 CFR 273.10(d)(6), which currently provides that all energy assistance payments except for those made under the LIHEAA must be prorated over the entire heating or cooling season that the payment is intended to cover. This was a technical error that FNS proposes to correct in this rule. Such a correction is consistent with the language in the Agricultural Act of 2014 that qualifying LIHEAP payments must be received in the current month or the immediately preceding 12 months in order to confer eligibility for the HCSUA. Additionally, the Agricultural Act of 2014 struck language in Section 5(e)(6)(C)(iv)(I) of the Act requiring that households incur "out-of-pocket heating or cooling expenses in excess of any assistance paid on behalf of the household to an energy provider." In light of these changes made by the Agricultural Act of 2014, FNS is proposing to amend 7 CFR 273.10(d)(6) to reflect the requirement in Section 5(e)(6)(C)(iv)(IV) that assistance under LIHEAA be considered to be prorated over the heating or cooling season.

The new language in Section 5(e)(6)(C)(iv)(I) of the Act no longer allows a household to qualify for a HCSUA based on anticipated receipt in future months. This rule proposes that applying the HCSUA to a household's case based on anticipated receipt is only permissible if the payment is anticipated to be received by the household within the current calendar month. At the State agency's option, if a qualifying LIHEAP or other payment greater than $20 (or payment which would bring the household's total payments for the year to a total greater than $20) is scheduled for the current month, the payment may be considered to have been received for the purposes of conferring eligibility for the HCSUA. However, if the payment is not actually made within that month, benefits received by the household would be considered an overissuance and the State agency should pursue a claim against the household for any benefits issued in error in accordance with its established claims management procedures. The Department is proposing to revise 7 CFR 273.9(d)(6)(iii)(C) accordingly to codify these requirements.

State agencies would be responsible for tracking the date and receipt of the qualifying LIHEAP or other payment to ensure the payment satisfies the timing requirements and exceeds the $20 minimum threshold. The Department encourages State agencies to modify data sharing agreements with their respective LIHEAP agencies, as appropriate, to ensure transmission of timely and accurate information needed for SNAP eligibility and benefit determinations.

If a household has not received a qualifying LIHEAP or other payment at the time of certification and has not incurred actual utility expenses, the household would not be entitled to the HCSUA at certification. If the household were to subsequently receive a qualifying LIHEAP or other payment, or if one were made on the household's behalf during the certification period, the State agency would need to take action according to the rules of their chosen reporting system under 7 CFR 273.12.

The Department notes that this provision does not affect a household's ability, if any, to use actual costs rather than the standardized HCSUA. SNAP households that are billed directly for utility costs are entitled to a Standard Utility Allowance (SUA) appropriate to the types of utility expenses they incur. In States that do not have mandatory SUA policies, the household is entitled to use its actual costs, rather than the standard. The Department encourages all State agencies to review their available utility allowances to ensure that all households with actual expenses are able to claim an allowance that best represents that types of utility expenses they have.

As a related issue, the regulations at 7 CFR 273.9(d)(6)(iii)(C) as currently written provide that a HCSUA is available to households in private rental housing who are billed by their landlords on the basis of individual usage or who are charged a flat rate separately from their rent. However, the Department understands that some individuals renting in public housing may also be billed based on individual usage or separately from their rent. Although the more common situation is for public housing properties to include heating and cooling costs in the rent, public housing rental situations with separate heating and cooling costs do exist. For these reasons, the Department is proposing a technical correction to § 273.9(d)(6)(iii)(C) by removing the word "private" from this provision.

In States with mandatory HCSUAs, utility costs do not require verification for SNAP purposes, unless questionable. Similarly, receipt of more than $20 in qualifying LIHEAP or other payments would not require verification for SNAP purposes, unless questionable. In States that do not mandate use of the HCSUA, verification of utility costs is mandatory if the household wishes to claim utility costs in excess of the State agency's HCSUA and the expense would actually result in a deduction. State agencies should consider program access, integrity, and the potential for Quality Control errors in determining their verification procedures.

Special Circumstances

State agencies that use the HCSUA would need to make the HCSUA available to SNAP households that have received a qualifying LIHEAP or other similar energy assistance program payment, regardless of any change in the household's residence or address. The Act does not specify that the qualifying LIHEAP or other payment must be received at the household's current address or place of residence.

If the State agency has an indication that a household received a qualifying LIHEAP or other payment in another State, the State would need to act on it. Again, for States that have elected to use a HCSUA, the HCSUA would need to be made available to households that have received a qualifying LIHEAP or other payment, provided that the payment was received in the current month or preceding 12 months and was in excess of $20 over the same time period.

If a household that has received a qualifying LIHEAP or other payment subsequently splits into two SNAP households, State agencies would need to determine which one household is eligible for the HCSUA based on the qualifying LIHEAP or other payment. The Department believes the State agency is in the best situation to determine which household would receive the HCSUA based on the qualifying LIHEAP or other payment. As with other discretionary policy decisions, a State's chosen policy would need to be applied in a consistent and equitable way. The Department is proposing to revise 7 CFR 273.9(d)(6)(iii)(C) to incorporate these standards.

The Department has received several inquiries regarding weatherization projects and eligibility for the HCSUA. The Department understands that State agencies may use a portion of LIHEAP block grant funding to support weatherization projects. Section 5(e)(6)(C)(iv) of the Act requires State agencies that use the HCSUA to make the HCSUA available to SNAP households that have received a LIHEAP or other payment, provided the payment was received by or made on behalf of the household in the current or preceding 12 months and exceeds $20 annually.

The Act does not explicitly address how State agencies should evaluate LIHEAP funds that are used to pay for weatherization projects on behalf of households in multi-family dwellings. However, to be an acceptable qualifying LIHEAP or other payment, the payment must be quantifiable to the household. The Department is proposing that weatherization projects for multi-family dwellings cannot confer eligibility for the HCSUA for households within the multi-family dwelling. The Act does not explicitly address how State agencies should evaluate LIHEAP funds that are used to pay for weatherization projects in multi-family dwellings. However, in a June 15, 1999 Information Memorandum issued by the Department of Health and Human Services (HHS), which oversees LIHEAP at the Federal level, HHS determined that weatherization of multi-unit buildings "is not a benefit provided to an individual, household or family eligibility unit." Because the Act requires that the LIHEAP or other payment must have been received by or made on behalf of a household, the Department is proposing that such payments cannot confer eligibility for the HCSUA. However, the Department requests comment on whether HHS' guidance is fully applicable in this situation, such as when weatherization of multi-family dwellings is funded by other similar energy assistance programs, and is considering alternative approaches that may allow multi-family dwelling weatherization projects to confer eligibility for the HCSUA. The Department requests comment on this proposal as well as potential alternative approaches.

Procedural Matters

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This proposed rule has been determined to be economically significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Regulatory Impact Analysis

As required for all rules that have been designated as significant by OMB, a RIA was developed for this proposed rule. The RIA for this rule was published as part of docket number [Docket Placeholder] on *www.regulations.gov.* A summary of the analysis follows:

The Regulatory Impact Analysis (RIA) that accompanies this proposed rule outlines the savings to the Government as well as the effect of the proposed rule on low-income families, program participation, and State agencies. The RIA also outlines the uncertainty in assumptions on savings and alternatives considered when drafting the proposed rule.

The Department estimates that the total savings to the Government from reduced SNAP benefits will be $2.2 billion between FY 2016 and FY 2020. The Department estimates that the effect of the rule on low-income families will result in potentially smaller benefit amounts for some families, primarily those living in States that have minimum LIHEAP payments below the new minimum threshold for LIHEAP payments required to be eligible for a HCSUA. The Department estimates that the impact on SNAP participation will be minimal, with one-fourth of households in States that do not increase their LIHEAP payment above the $20 threshold seeing a decrease in benefits, but likely still being eligible to participate in the program. The Department estimates that the impact on State agencies will be minimal since States already made changes to their current caseload in accordance with the timeframes established under Section 4006 of the Agricultural Act of 2014 and the FNS guidance implementing Section 4006. There is some uncertainty concerning the estimates in the RIA, in part because they assume no changes in State behavior over time. Thirteen States have increased their minimum LIHEAP payments following the enactment of Section 4006 of the Agricultural Act of 2014. If one or more of these thirteen states decreases or discontinues these minimum payments in future years, savings would increase. Conversely, if any additional States decide to issue LIHEAP payments above the $20 threshold in future years, savings would decrease. The Department did not consider any alternatives to this rule because the language in the Agricultural Act of 2014 was very specific and prescriptive regarding the implementation dates and the payment threshold required.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified that this proposed rule would not have a significant impact on a substantial number of small entities. State agencies that administer SNAP will be affected to the extent they implement the changes to program operations.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and Tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local or Tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This proposed rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and Tribal governments or the private sector of $100 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

SNAP is listed in the Catalog of Federal Domestic Assistance Programs under 10.551. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related Notice (48 FR 29115, June 24, 1983), this program is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13121.

The Department has determined that this proposed rule does not have Federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a Federalism summary impact statement is not required.

Executive Order 12988, Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule, when published as a final rule, is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation. This rule is not intended to have retroactive effect unless so specified in the Effective Dates section of the final rule. Prior to any judicial challenge to the provisions of the final rule, all applicable administrative procedures must be exhausted.

Civil Rights Impact Analysis

The Department has reviewed this proposed rule in accordance with the Department Regulation 4300–4, "Civil Rights Impact Analysis," to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, the Department has determined that this rule will not in any way limit or reduce the ability of protected classes of individuals. The Department has reviewed this proposed rule in accordance with USDA Regulation 4300–4, "Civil Rights Impact Analysis," to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, or disability.

The changes to SNAP regulations in this proposed rule are required by law and are not intended to limit the participation of any group of individuals in the SNAP program.

Impact on Households: This mandatory change will impact all households uniformly, regardless of status in a protected class. Although LIHEAP and other similar energy assistance program payments are issued by agencies other than USDA, FNS understands that these payments are not disseminated to specific portions of the population based on status in a protected class. Nor does FNS have information indicating that particular protected classes receive these payments.

In States that do not provide minimum LIHEAP payments greater than $20, the new legislation may affect the number of households that qualify for the HCSUA and may cause a reduction to those households' monthly SNAP benefit amounts. However, households that previously qualified for the HCSUA based on the receipt of a $20 or less LIHEAP payment may still qualify for the HCSUA if they incur heating or cooling expenses. Only those households without actual heating and cooling costs will experience a benefit change due to the implementation of this provision of the Agricultural Act of 2014.

Further, FNS specifically prohibits the State and local government agencies that administer the program from engaging in discriminatory actions. Discrimination in any aspect of program administration is prohibited by SNAP regulations, the Food and Nutrition Act of 2008, the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 and Title VI of the Civil Rights Act of 1964. Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with these requirements and the regulations at 7 CFR 272.6.

Impact on State Agencies: State agencies have already implemented this requirement, and have already completed necessary changes to eligibility systems, manuals, and training procedures for staff. Also, although State agencies had some flexibility to stagger the application of this provision to ongoing caseloads, at this point, the new requirements are being used to determine program eligibility for all new applicants and ongoing cases.

Training and Outreach: SNAP is administered by State agencies which communicate program information and program rules based on Federal law and regulations to those within their jurisdiction, including individuals from protected classes that may be affected by program changes. After the passage of the Agricultural Act of 2014, FNS worked with State agencies to ensure their understanding of the changes required by Section 4006. FNS released an implementation memorandum on this provision with all State agencies on March 5, 2014. In response to various State agencies' questions on LIHEAP-related issues, FNS shared guidance through a Question & Answer memorandum on April 7, 2014 and a second Q&A memorandum on August 20, 2014 to address the State agencies' questions and concerns and ensure clarity on requirements for implementing the requirement.

FNS also maintains a public Web site that provides basic information on each program, including SNAP. Interested persons, including potential applicants, applicants, and participants can find information about these changes as well as State agency contact information, downloadable applications, and links to State agency Web sites and online applications.

After careful review of the rule's intent and provisions, and the characteristics of SNAP households and individual participants, the Department has determined that this proposed rule will not have a disparate impact on any group or class of persons.

Executive Order 13175

This proposed rule has been reviewed in accordance with the requirements of Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

FNS has assessed the impact of this proposed rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under E.O. 13175. On February 18, 2015, the agency held a webinar for tribal participation and comments. No comments were received. If a Tribe requests consultation, FNS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR 13200) requires that the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. This proposed rule does not contain information collection requirements subject to approval of OMB under the Paperwork Reduction Act of 1994. State agencies were required to make minimal, one-time changes to their eligibility systems, manuals, and training procedures for staff by May 5, 2014 to comply with the provisions of the statute. Other minimal burdens imposed on State agencies by this proposed rule are usual and customary within the course of their normal business activities.

E-Government Act Compliance

The Department is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 273

Determining household eligibility and benefit levels, Income and deductions.

Accordingly, 7 CFR part 273 is proposed to be amended as follows:

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

■ 1. The authority citation for part 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

■ 2. In § 273.9, revise paragraph (d)(6)(iii)(C) to read as follows:

§ 273.9 Income and deductions.

* * * * *

(d) * * *

(6) * * *

(iii) * * *

(C)(*1*) A standard with a heating or cooling component must be made available to the following households:

(*i*) Households that incur heating or cooling expenses separately from their rent or mortgage;

(*ii*) Households in rental housing who are billed by their landlords on the basis of individual usage or who are charged a flat rate separately from their rent. However, households in public housing units which have central utility meters and which charge households only for excess heating or cooling costs are not entitled to a standard that includes heating or cooling costs based only on the charge for excess usage, unless the State agency mandates the use of standard utility allowances in accordance with paragraph (d)(6)(iii)(E) of this section; and

(*iii*) Households that receive a payment or on behalf of which a payment was made under the Low Income Home Energy Assistance Act of 1981 (LIHEAA) or other similar energy assistance program, if in the current month or in the immediately preceding 12 months and such payment was greater than $20 annually. Other similar energy assistance programs are separate home energy assistance programs designed to provide heating or cooling assistance through a payment received by or made on behalf of low-income households. A payment received by a household or made on behalf of a household under LIHEAA or other similar energy assistance program must be quantifiable in order to confer eligibility for the heating and cooling standard utility allowance. A quantifiable payment is one that the State agency quantifies, in dollars. The State agency shall document the date and receipt of a payment made under LIHEAA or other similar energy assistance program to ensure the payment was received in the current month or the immediately preceding 12 months and exceeds $20 annually. In determining a household's eligibility for the HCSUA, State agencies shall not consider anticipated receipt of a payment to be an actual payment received under the LIHEAA or other similar energy assistance program. However, for purposes of this subclause, a State agency may consider a payment under the LIHEAA or other similar energy assistance program to be received by the household or on behalf of the household if the household is scheduled to receive the payment in the current month. In a case where a payment is scheduled to be received in the current month and the payment is not actually made within that month, the State agency is responsible for determining whether an overissuance has occurred and, if so, establishing a claim against the household for any benefits issued in error in accordance with the requirements at 7 CFR 273.18. If a household that has received a payment made under the LIHEAA or other similar energy assistance program or such a payment has been made on a household's behalf and the household subsequently splits into two SNAP households, the State agency must determine which one household is eligible for the heating and cooling standard utility allowance as a result of receiving that payment.

(*2*) A household that has both an occupied home and an unoccupied home is only entitled to one standard.

* * * * *

■ 3. In § 273.10, revise paragraph (d)(6) to read as follows:

§ 273.10 Determining household eligibility and benefit levels.

* * * * *

(d) * * *

(6) Energy Assistance Payments. The State agency shall prorate energy assistance payments as provided for in § 273.9(d) of this part over the entire heating or cooling season the payment is intended to cover.

* * * * *

Dated: April 12, 2016.

Kevin Concannon,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 2016–09114 Filed 4–19–16; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. FSIS–2015–0042]

RIN 0583–ZA11

Eligibility of the Republic of Poland To Export Poultry Products to the United States

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to add the Republic of Poland (Poland) to the list of countries in the regulations eligible to export poultry products to the United States. FSIS has reviewed Poland's poultry laws, regulations, and inspection system as implemented and has tentatively determined that they are equivalent to the Poultry Products Inspection Act (PPIA), the regulations implementing this statute, and the U.S. food safety system for poultry.

Should this rule become final, slaughtered poultry, or parts or other products thereof, processed in certified Polish establishments, would be eligible for export to the United States. Although Poland may be listed in FSIS's regulations as eligible to export poultry products to the United States, the products must also comply with all other applicable requirements of the United States, including those of USDA's Animal and Plant Health Inspection Service (APHIS), before any products can enter the United States. All such products would be subject to re-inspection at U.S. ports-of-entry by FSIS inspectors.

DATES: Comments must be received on or before June 20, 2016.

ADDRESSES: FSIS invites interested persons to submit comments on this proposed rule. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov*. Follow the online instructions at that site for submitting comments.
- *Mail, including CD–ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Patriots Plaza 3, 1400 Independence Avenue SW., Mailstop 3782, Room 8–163A, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to Patriots Plaza 3, 355 E Street SW., Room 8–163B, Washington, DC 20250–3700.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2015–0042. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov*.

Docket: For access to background documents or comments received, go to the FSIS Docket Room at Patriots Plaza 3, 355 E Street SW., Room 8–164, Washington, DC 20250–3700 between 8:00 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel Engeljohn, Assistant Administrator, Office of Policy and Program Development; Telephone: (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Background

FSIS is proposing to amend its poultry products inspection regulations to add Poland to the list of countries eligible to export poultry products to the United States (9 CFR 381.196(b)). Poland is not currently listed as eligible to export such products to the United States.

Statutory Basis for Proposed Action

Section 17 of the PPIA (21 U.S.C. 466) prohibits importation into the United States of slaughtered poultry, or parts or products thereof, of any kind unless they are healthful, wholesome, fit for human food, not adulterated, and contain no dye, chemical, preservative, or ingredient that renders them unhealthful, unwholesome, adulterated, or unfit for human food. Under the PPIA and the regulations that implement it, poultry products imported into the United States must be produced under standards for safety, wholesomeness, and labeling accuracy that are equivalent to those of the United States. Section 381.196 of Title 9 of the Code of Federal Regulations (CFR) sets out the procedures by which foreign countries may become eligible to export poultry and poultry products to the United States.

Section 381.196(a) requires a foreign country's poultry inspection system to include standards equivalent to those of the United States and to provide legal authority for the inspection system and its implementing regulations that is equivalent to that of the United States. Specifically, a country's legal authority and regulations must impose requirements equivalent to those of the United States with respect to: (1) Ante-mortem and post-mortem inspection by, or under the direct supervision of, a veterinarian; (2) official controls by the national government over establishment construction, facilities, and equipment; (3) direct and continuous official supervision of slaughtering of poultry and processing of poultry products by inspectors to ensure that product is not adulterated or misbranded; (4) complete separation of establishments certified to export from those not certified; (5) maintenance of a single standard of inspection and sanitation throughout certified establishments; (6) requirements for sanitation and for sanitary handling of product at establishments certified to export; (7) official controls over condemned product; (8) a Hazard Analysis and Critical Control Point (HACCP) system; and (9) any other requirements found in the PPIA and its implementing regulations (9 CFR 381.196(a)(2)(ii)).

The country's inspection system must also impose requirements equivalent to those of the United States with respect to: (1) Organizational structure and staffing to ensure uniform enforcement of the requisite laws and regulations in all certified establishments; (2) national government control and supervision over the official activities of employees or licensees; (3) assignment of qualified inspectors; (4) enforcement and certification authority; (5) administrative and technical support; (6) inspection, sanitation, quality, species verification, and residue standards; and (7) any other inspection requirements (9 CFR 381.196(a)(2)(i)).

The foreign country's inspection system must ensure that establishments preparing poultry or poultry products for export to the United States, and their products, comply with requirements equivalent to those of the PPIA and the regulations promulgated by FSIS under the authority of that statute. The foreign country certifies the appropriate establishments as having met the required standards and advises FSIS of those establishments that are certified or removed from certification. Before FSIS will grant approval to the country to export poultry or poultry products to the United States, FSIS must first determine that reliance can be placed on the certification of establishments by the foreign country.

As indicated above, a foreign country's inspection system must be evaluated by FSIS before eligibility to export poultry products to the United States can be granted. This evaluation consists of two processes: A document review and an on-site review. The document review is an evaluation of the laws, regulations, and other written materials used by the country to effect its inspection program. To help the country in organizing its materials, FSIS provides the country with a series of questions asking for detailed information about the country's inspection practices and procedures in six areas or equivalence components: (1) Government Oversight, (2) Statutory Authority and Food Safety Regulations, (3) Sanitation, (4) HACCP Systems, (5) Chemical Residue Testing Programs, and (6) Microbiological Testing Programs. FSIS evaluates the information submitted to verify that the critical points in the six equivalence components are addressed satisfactorily with respect to standards, activities, resources, and enforcement. If the document review is satisfactory, an onsite review is scheduled using a multidisciplinary team to evaluate all aspects of the country's inspection program. This comprehensive process is described more fully on the FSIS Web site at *http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/importing-products/equivalence/equivalence-process-overview.*

The PPIA and implementing regulations require that foreign countries determined by the Administrator to have acceptable inspection systems be listed in the regulations as eligible to export poultry products to the United States. FSIS must engage in rulemaking to list a country as eligible. Countries found eligible to export poultry or poultry products to the United States are listed in the poultry inspection regulations at 9 CFR 381.196(b). Once listed, the government of an eligible country must certify to FSIS that establishments that wish to export poultry products to the United States are operating under requirements equivalent to those of the United States (9 CFR 381.196(a)(3)). Countries must renew certifications of establishments annually (9 CFR 381.196(a)(3)). To verify that products imported into the United States are not adulterated or misbranded, FSIS re-inspects and randomly samples those products at ports-of-entry before they enter U.S. commerce.

Evaluation of the Polish Poultry Inspection System

In 2004, the government of Poland requested approval to export raw, ready-to-eat (RTE), and canned poultry to the United States. Poland stated that, if approved, its immediate intent was to export chicken, turkey, and goose meat to the United States. FSIS conducted a document review of Poland's poultry (slaughter and processing) inspection system to determine whether that system was equivalent to the United States poultry inspection system. FSIS concluded, on the basis of that review, that Poland's laws, regulations, control programs, and procedures were sufficient to achieve the level of public health protection required by FSIS.

Accordingly, FSIS proceeded with an on-site audit of Poland's poultry inspection system from May 10 to June 1, 2011, to verify whether Poland's General Veterinary Inspectorate (GVI), which is Poland's central competent authority (CCA) in charge of food inspection, has effectively implemented a poultry inspection system equivalent to that of the United States. FSIS reviewed two processing and one cold storage establishment intending to export to the United States. From the on-site audit, FSIS concluded that Poland's poultry inspection system did not meet the Government Oversight, Sanitation, HACCP Systems, and Microbiological Testing Programs equivalence components. For example, FSIS found that there was inconsistency in the enforcement of corrective action requirements in response to noncompliances. In addition, FSIS found that the CCA was lacking current policy or regulations that specifically require establishments to develop and implement written Sanitation Standard Operating Procedures and HACCP plans as conditions for gaining certification for export of poultry products to the United States. FSIS also found that the GVI did not possess evidence of staff participation in training, did not maintain tracked records of training at all levels of the CCA, and that the GVI did not have a mechanism to assess the effectiveness of the training programs.

In addition, FSIS was not able to audit the poultry slaughter inspection in operation because the GVI withdrew the poultry slaughter establishment scheduled for the FSIS audit. FSIS's report discussing the findings of the 2011 on-site audit and the initial corrective actions proffered by GVI is available at the following web address: *http://www.fsis.usda.gov/wps/wcm/connect/18fc607d-9511-4cc8-8e4c-bc9f6b90cb0c/Poland_Poultry_2011_FAR.pdf?MOD=AJPERES.*

Following the 2011 on-site audit, Poland addressed the FSIS audit findings through corrective action plans presented to FSIS on September 5, 2012, October 11, 2012, and March 20, 2013. FSIS evaluated the corrective action plans and, based on the information Poland submitted, determined that Poland had addressed FSIS's findings.

In July 2014, FSIS conducted a follow-up initial equivalence on-site audit. During the follow-up audit, the FSIS auditor reviewed the inspection operations at two chicken slaughter and three chicken processing establishments intending to export raw, ready-to-eat (RTE), and thermally processed commercially sterile (canned) products to the United States. Based on the results of the follow-up audit, FSIS concluded that Poland had satisfactorily addressed all initial audit findings and was able to meet FSIS requirements and equivalence criteria related to all six components. The final audit report on Poland's poultry inspection system (slaughter and processing) can be found on the FSIS Web site at: *http://www.fsis.usda.gov/wps/wcm/connect/33c2d71a-6d5c-4224-b64d-fd7725b8282f/Poland-FAR-2011-2014.pdf?MOD=AJPERES.*

In summary, FSIS has completed the document review, on-site audits, and verification of corrective actions as part of the equivalence process, and all outstanding issues have been resolved. FSIS has tentatively determined that, as implemented, Poland's poultry inspection system (slaughter and processing) is equivalent to the United States poultry inspection system pending issuance of a final rule.

Following the FSIS audit of Poland's poultry inspection system, on August 21, 2014, FSIS published a final rule to modernize poultry slaughter inspection (79 FR 49566). The rule implemented new U.S. regulatory requirements including (1) the New Poultry Inspection System (NPIS), an optional post-mortem inspection system, and (2) regulatory changes that apply to all poultry slaughter establishments. FSIS expects Poland to submit sufficient evidence to demonstrate how the Polish poultry inspection system achieves an equivalent outcome to the revised U.S. regulations. Before issuing a final rule to add Poland to the list of equivalent countries, and before any product is shipped to the United States, FSIS must verify whether the Polish poultry inspection system is equivalent with the new U.S. regulatory requirements in the August 21, 2014 final rule.

Should this rule become final, Poland will be eligible to export raw, RTE, and thermally processed commercially sterile (canned) poultry products to the United States. The government of Poland must certify to FSIS those establishments that wish to export poultry products to the United States are operating in accordance with requirements equivalent to those of the United States. FSIS will verify that the establishments certified by Poland's government meet the U.S. requirements through periodic and regularly scheduled audits of Poland's poultry inspection system.

Although a foreign country may be listed in FSIS regulations as eligible to export poultry to the United States, the exporting country's products must also comply with all other applicable requirements of the United States. These requirements include restrictions under 9 CFR part 94 of the United States Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) regulations, which also regulate the importation of poultry products from foreign countries into the United States. APHIS has recognized Poland as part of the EU Poultry Trade Region and considers them not affected with either HPAI or Newcastle disease. There are specific certification statements required for poultry product imports to address the animal health issues, and these are defined under 9 CFR 94.28. Any poultry product imports from Poland would be required to meet these requirements.

If this proposed rule is adopted, all slaughtered poultry, or parts and products thereof, exported to the United States from Poland will be subject to re-inspection at the U.S. ports-of-entry for, but not limited to, transportation damage, product and container defects, labeling, proper certification, general condition, and accurate count. In addition, FSIS will conduct other types of re-inspection activities, such as incubation of canned products to ensure product safety and taking product samples for laboratory analysis for the detection of drug and chemical residues, pathogens, species, and product composition. Products that pass re-inspection will be stamped with the official U.S. mark of inspection and allowed to enter U.S. commerce. If they do not meet U.S. requirements, they will be refused entry and within 45 days must be exported to the country of origin, destroyed, or converted to animal food (subject to approval of the U.S. Food and Drug Administration (FDA)), depending on the violation. The import re-inspection activities can be found on the FSIS Web site at: *http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/importing-products/port-of-ventry-procedures/fsis-import-reinspection.*

FSIS has found Poland eligible to export all poultry and poultry products to the United States. Currently, Poland has elected to only certify chicken establishments for export to the United States. In order to export turkey or goose product, Poland will need to notify FSIS and certify any new establishments. FSIS will review information provided by Poland and may decide to audit based on additional product. Poland would not be allowed to export additional products to the United States until FSIS determines that the country's requirements and inspection program for the products are equivalent to FSIS's system.

Executive Orders 12866 and 13563, and the Regulatory Flexibility Act

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule has been designated a "non-significant" regulatory action under section 3(f) of Executive Order (E.O.) 12866. Accordingly, the rule has not been reviewed by the Office of

Management and Budget (OMB) under E.O. 12866.

Expected Cost of the Proposed Rule

Poland intends to certify seven establishments that would export chicken to the United States. Within the European Union (EU), Poland is a major poultry producer. According to a 2014 report, the EU listed Poland as the top poultry producer.[1] Over the past 10 years, Poland has doubled its poultry production (2.2 million metric tons in 2014). Poland's poultry production consists of 81% chicken broilers, 14% turkey broilers, and 5% other poultry broilers such as duck and geese. Poland's poultry production uses mostly locally produced grain.[2] Lower feed costs and continuing export demand has helped Poland double its poultry exports within the last five years (741 thousand metric tons in 2014.).[3] Currently, Poland's primary export markets are Germany, the United Kingdom, and France.

Poland exports chicken, turkey, duck and geese products to other countries. Table 1 provides unit values for Poland's poultry product exports and shows Poland's price competitiveness in the poultry export market. Poland is price competitive for most poultry products that the United States imports from other countries, primarily Canada and Chile.

TABLE 1—POLAND EXPORT POULTRY PRODUCTS PRICE COMPETITIVENESS

Commodity description	Poland export unit price U.S.$/MT		U.S. Import price U.S.$/MT	
	2014	3-Year average	2014	3-Year average
Meat & Edible Offal Of Poultry, Fresh, Chill Or Frozen	$2,713	$2,701	$3,207	$3,188
Chicken Cuts And Edible Offal (Including Livers), Frozen	1,892	1,885	3,021	3,022
Turkey Cuts And Edible Offal (Including Liver) Frozen	2,744	2,616	3,015	2,475
Chicken Cuts & Edible Offal (Including Liver) Fresh/Chilled	3,184	3,144	4,331	4,158
Meat & Offal Of Chickens, Not Cut Fresh Or Chilled	1,979	1,992	3,588	3,511
Cuts And Offal Of Ducks, Frozen	2,924	2,677	3,834	4,320
Turkey Cuts & Edible Offal (Including Liver) Fresh/Chilled	4,500	4,326	2,897	4,729
Meat Of Ducks, Frozen, Not Cut In Pieces	2,870	3,041	4,277	4,185
Meat & Offal Of Chickens, Not Cut In Pieces, Frozen	1,818	1,870	4,133	4,483
Cuts And Offal Of Ducks, Excluding Livers, Fresh/Chilled	5,057	5,480	13,628	12,764
Turkeys, Not Cut In Pieces, Fresh Or Chilled	3,217	3,154	3,820	4,015
Fatty Livers Of Ducks, Fresh Or Chilled	20,324	8,493	54,021	54,157
Turkeys, Not Cut In Pieces, Frozen	3,187	3,159	2,123	4,052
Meat, Offal Of Guinea Fowls, Fresh, Chilled Frozen	2,154	2,039	2,270	2,495
Meat Of Ducks, Fresh Or Chilled, Not Cut In Pieces	3,278	2,908	9,715	7,411

Source: U.S. Department of Commerce, and Global Trade Atlas at *http://www.gtis.com/gta/secure/gateway.cfm.*

Both the low cost of poultry production and low export unit price are why the United States is a top poultry exporter.

In total, poultry imports account for only 0.3% of the U.S. poultry supply.[4] In 2014, the United States produced 17.3 million Metric Tons (MT) of poultry, exported 3.3 million MT of poultry, consumed 14 million MT of poultry, and imported only 0.053 million MT of poultry.[5] U.S. poultry imports have remained relatively unchanged in recent years,[6] and there is no reason to believe the amount will change substantially in the future. For Poland to export poultry to the United States, it must be export-eligible, export-capable, and price-competitive. After comparing Poland's price competitiveness with the United States, Chile, and Canada, FSIS estimates that the maximum potential Polish poultry products exports to the United States is expected to be between 29,500 MT and 44,300 MT. This means that the total U.S. poultry supply will increase only between 0.15% and 0.22% due to Poland's projected export volume to the United States, leaving the total U.S. poultry supply almost unchanged. Thus, Poland's projected poultry export volume to the United States would only minimally change U.S. poultry prices, not enough to alter the U.S. poultry market. Currently, however, Poland only intends to certify as eligible seven establishments to export raw, RTE, and thermally processed commercially sterile (canned) chicken products to the United States. The total processing capacity of these seven establishments is less than Poland's total poultry export capacity. With minimal price change expected in the U.S. poultry markets, adopting this proposed rule would not have a negative effect on U.S. consumers.

Companies that export products from Poland to the United States will incur the standard costs associated with exporting products to the United States, such as export fees and freight or insurance costs. They will be willing to bear these costs, however, because of the anticipated financial benefits associated with marketing their products in the United States.

Expected Benefits of the Proposed Rule

Adoption of this proposed rule will increase trade between the United States and Poland. The volume of trade stimulated by the proposed rule is likely to be small and is expected to have little or no effect on U.S. poultry supplies or poultry prices. U.S. consumers, however, are expected to enjoy more choices when purchasing poultry products. The proposed rule would, therefore, expand choices for U.S. consumers and promote economic competition.

Effect on Small Entities

The FSIS Administrator has made a preliminary determination that this proposed rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The expected trade volume will be small, with little or no effect on U.S. establishments, regardless of size.

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[1] *http://ec.europa.eu/agriculture/poultry/index_en.htm* Accessed: September 18, 2015.

[2] Correspondence with the Foreign Agricultural Service (FAS), USDA, May 2015.

[3] Ibid.

[4] USDA, Foreign Agricultural Service, *https://apps.fas.usda.gov/psdonline/psdQuery.aspx.*

[5] Ibid.

[6] Ibid

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under this rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) no administrative proceedings will be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

No new paperwork requirements are associated with this proposed rule. Foreign countries wanting to export poultry and poultry products to the United States are required to provide information to FSIS certifying that their inspection systems provide standards equivalent to those of the United States, and that the legal authority for the system and their implementing regulations are equivalent to those of the United States. FSIS provided Poland with questionnaires asking for detailed information about the country's inspection practices and procedures to assist that country in organizing its materials. This information collection was approved under OMB control number 0583–0094. The proposed rule contains no other paperwork requirements.

E-Government Act

FSIS and USDA are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the Internet and other information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

Additional Public Notification

FSIS will officially notify the World Trade Organization's Committee on Sanitary and Phytosanitary Measures (WTO/SPS Committee) in Geneva, Switzerland, of this proposal and will announce it on-line through the FSIS Web page located at: *http://www.fsis.usda.gov/wps/portal/fsis/topics/vregulations/federal-register/proposed-rules*. FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is available on the FSIS Web page. Through the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410.

Fax: (202) 690–7442.

Email: program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

List of Subjects in 9 CFR Part 381

Imported products.

For the reasons set out in the preamble, FSIS is proposing to amend 9 CFR part 381 as follows:

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

■ 1. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.7, 2.18, 2.53.

§ 381.196 [Amended]

■ 2. Amend § 381.196(b) by adding "Poland" in alphabetical order to the list of countries.

Done at Washington, DC, on: April 15, 2016.

Alfred V. Almanza,

Acting Administrator.

[FR Doc. 2016–09185 Filed 4–19–16; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE–2016–BT–STD–0004]

RIN 1904–AD61

Appliance Standards and Rulemaking Federal Advisory Committee: Notice of Open Meetings for the Circulator Pumps Working Group To Negotiate a Notice of Proposed Rulemaking (NOPR) for Energy Conservation Standards and Test Procedures

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public meetings.

SUMMARY: The Department of Energy (DOE) announces public meetings and webinars for the Circulator Pumps Working Group. The Federal Advisory Committee Act requires that agencies publish notice of an advisory committee meeting in the **Federal Register**.

DATES: See **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: The meetings will be held at U.S. Department of Energy, Building Technologies Office, 950 L'Enfant Plaza, 6th Floor SW., Washington, DC, unless otherwise stated in the **SUPPLEMENTARY INFORMATION** section. Individuals will also have the opportunity to participate by webinar. To register for the webinars and receive call-in information, please register at DOE's Web site: *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=41&action=viewlive.*

FOR FURTHER INFORMATION CONTACT: Mr. Joe Hagerman, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies, EE–5B, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–4549. Email: *asrac@ee.doe.gov.*

Ms. Johanna Jochum, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue

SW., Washington, DC 20585–0121. Telephone: (202) 287–6307. Email: *Johanna.Jochum@Hq.Doe.Gov.*

SUPPLEMENTARY INFORMATION: On January 20, 2016, ASRAC met and unanimously passed the recommendation to form a Circulator Pumps Working Group. The purpose of the working group is to discuss and, if possible, reach consensus regarding definitions, test procedures, and energy conservation standards, to form the basis of proposed energy conservation standards and test procedures. The Working Group consists of representatives of parties having a defined stake in the outcome of the proposed standards, and will consult as appropriate with a range of experts on technical issues. Per the ASRAC Charter, the Working Group is expected to make a concerted effort to negotiate a final term sheet by September 30, 2016. This document announces the next series of meetings for this working group.

DOE will host public meetings and webinars on the below dates.

- Wednesday, May 4, 2016 at 9:00 a.m. to 5:00 p.m. EST at 955 L'Enfant Plaza, Room 8037B, SW., Washington, DC
- Thursday, May 5, 2016 from 8:00 a.m. to 3:00 p.m. EST at 955 L'Enfant Plaza, Room 8037B, SW., Washington, DC
- Thursday, June 16, 2016 at 9:00 a.m. to 5:00 p.m. EST at Navigant Offices, 1200 19th St NW., #700, Washington, DC
- Friday, June 17, 2016 at 8:00 a.m. to 3:00 p.m. EST at 955 L'Enfant Plaza, Room 8037B, SW., Washington, DC
- Tuesday, July 12, 2016 at 9:00 a.m. to 5:00 p.m. EST at 955 L'Enfant Plaza, Room 8037B, SW., Washington, DC
- Wednesday, July 13, 2016 at 8:00 a.m. to 3:00 p.m. EST at 955 L'Enfant Plaza, Room 8037B, SW., Washington, DC
- Wednesday, August 10, 2016 at 9:00 a.m. to 5:00 p.m. EST at 955 L'Enfant Plaza, Room 8037B, SW., Washington, DC
- Thursday, August 11, 2016 at 8:00 a.m. to 3:00 p.m. EST at 950 L'Enfant Plaza, Room 6097, SW., Washington, DC
- Wednesday, September 7, 2016 at 9:00 a.m. to 5:00 p.m. EST at 955 L'Enfant Plaza, Room 8037B, SW., Washington, DC
- Thursday, September 8, 2016 at 8:00 a.m. to 3:00 p.m. EST at 950 L'Enfant Plaza, Room 6097, SW., Washington, DC
- Wednesday, September 28, 2016 at 9:00 a.m. to 5:00 p.m. EST at 950 L'Enfant Plaza, Room 6097, SW., Washington, DC
- Thursday, September 29, 2016 at 8:00 a.m. to 3:00 p.m. EST at 950 L'Enfant Plaza, Room 6097, SW., Washington, DC

Members of the public are welcome to observe the business of the meeting and, if time allows, may make oral statements during the specified period for public comment. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, email *asrac@ee.doe.gov.* In the email, please indicate your name, organization (if appropriate), citizenship, and contact information. Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures which require advance notice prior to attendance at the public meeting. If you are a foreign national, and wish to participate in the public meeting, please inform DOE as soon as possible by contacting Ms. Regina Washington at (202) 586–1214 or by email: *Regina.Washington@ee.doe.gov* so that the necessary procedures can be completed. Anyone attending the meeting will be required to present a government photo identification, such as a passport, driver's license, or government identification. Due to the required security screening upon entry, individuals attending should arrive early to allow for the extra time needed.

Due to the REAL ID Act implemented by the Department of Homeland Security (DHS) recent changes have been made regarding ID requirements for individuals wishing to enter Federal buildings from specific states and U.S. territories. Driver's licenses from the following states or territory will not be accepted for building entry and one of the alternate forms of ID listed below will be required.

DHS has determined that regular driver's licenses (and ID cards) from the following jurisdictions are not acceptable for entry into DOE facilities: Alaska, Louisiana, New York, American Samoa, Maine, Oklahoma, Arizona, Massachusetts, Washington, and Minnesota.

Acceptable alternate forms of Photo-ID include: U.S. Passport or Passport Card; an Enhanced Driver's License or Enhanced ID-Card issued by the states of Minnesota, New York or Washington (Enhanced licenses issued by these states are clearly marked Enhanced or Enhanced Driver's License); A military ID or other Federal government issued Photo-ID card.

Docket: The docket is available for review at *www.regulations.gov,* including **Federal Register** documents, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

Issued in Washington, DC, on April 14, 2016.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

[FR Doc. 2016–09126 Filed 4–19–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5591; Directorate Identifier 2014–NM–193–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2005–15–07, for certain Airbus Model A320–111 airplanes and Model A320–200 series airplanes. AD 2005–15–07 currently requires installing insulator and cable ties to the electrical cables of the S routes at the gaps in the raceway in the wing trailing edge and the wing tip and wing root areas. Since we issued AD 2005–15–07, we have received reports of wire chafing in the left-hand wing trailing edge. This proposed AD would require additional modifications in the trailing edges of both wings. This proposed AD would also remove airplanes from the applicability. We are proposing this AD to prevent wire chafing in the trailing edge of the wings, which could result in a short circuit in the vicinity of the fuel tanks, consequently resulting in a potential source of ignition in a fuel tank vapor space and consequent fuel tank explosion.

DATES: We must receive comments on this proposed AD by June 6, 2016.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5591; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–5591; Directorate Identifier 2014–NM–193–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On July 13, 2005, we issued AD 2005–15–07, Amendment 39–14196 (70 FR 43024, July 26, 2005) ("AD 2005–15–07"). AD 2005–15–07 requires actions intended to address an unsafe condition on certain Airbus Model A320–111 airplanes and Model A320–200 series airplanes.

Since we issued AD 2005–15–07, we have received reports of wire chafing in the left-hand wing trailing edge.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0198, dated September 5, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for certain Airbus Model A320–211, –212, and –231 airplanes. The MCAI states:

> Prompted by an accident * * *, the FAA published Special Federal Aviation Regulation (SFAR) 88 [(66 FR 23086, May 7, 2001)], and the Joint Aviation Authorities (JAA) published Interim Policy INT/POL/25/12.
>
> Prompted by that regulation, the results of an Airbus review of the A320 type design identified, on certain aeroplanes, a possible ignition source in fuel tank vapour space(s). That condition, if not corrected, could result in a fuel tank explosion and consequent loss of the aeroplane.
>
> It was, therefore, decided to modify the cable routes of the wing trailing edge, aft of the rear spar and wing tip of those aeroplanes, to be applied in service in accordance with the instructions of Airbus Service Bulletin (SB) A320–24–1062 Revision 05. Following that decision, DGAC France issued AD F–2004–173 (EASA approval number 2004–10570) to require that modification.
>
> After that AD was issued, it was found that additional work, introduced by Airbus SB A320–24–1062 Revision 05, was not included as part of the normal accomplishment instructions, which meant that the additional work might not be accomplished. Consequently, EASA issued AD 2008–0051, retaining the requirements of DGAC France AD F–2004–173 [which corresponds to FAA AD 2005–15–07, Amendment 39–14196 (70 FR 43024, July 26, 2005)], which was superseded, and required the accomplishment of the additional work in accordance with the instructions of Airbus SB A320–24–1062 Revision 06. EASA AD 2008–0051 was revised to reduce the Applicability and to add a clarification to paragraph (2).
>
> After EASA AD 2008–0051R1 was issued, some operators reported wire chafing in the left hand wing trailing edge. Investigation established that the wire chafing, initiated at raceway gaps, was either due to maintenance action(s), or to structure vibrations.
>
> Prompted by these findings, Airbus developed two modifications to prevent any further wire chafing by introducing an additional protection at raceway gaps and a new cable standard in the trailing edges of both wings. Airbus published SB A320–92–1049 and SB A320–92–1052 to make these modifications available for in-service application. At the time of incorporation of Airbus SB A320–24–1062, these two modifications were considered recommended only.
>
> EASA recently determined that this condition, if not corrected, could lead to a short circuit on 115 volts in the vicinity of fuel tanks, consequently creating another risk of ignition source in a fuel tank vapour space.
>
> For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2008–0051R1, which is superseded, and requires modifications to install the additional anti-chafing protection and the new cable standard.

This proposed AD also removes Model A320–214, –232, and –233 airplanes from the applicability because those airplane models have been modified in production or in service. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5591.

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletins A320–92–1049, Revision 01, dated November 28, 2011; A320–92–1052, dated December 5, 2007; and A320–24–1062, Revision 07, dated November 28, 2011.

Airbus Service Bulletin A320–92–1049, Revision 01, dated November 28, 2011, describes procedures to install the additional anti-chafing protection.

Airbus Service Bulletin A320–92–1052, dated December 5, 2007, describes procedures to replace the current electrical cable with the new standard one.

Airbus A320–24–1062, Revision 07, dated November 28, 2011, describes procedures to install insulator and cable ties to the electrical cables of the S routes at the gaps in the raceway in the wing trailing edge and the wing tip and wing root areas.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Difference Between This Proposed AD and the MCAI or Service Information

The MCAI specifies a compliance time of 72 months for modifying the trailing edges of both wings. However, this proposed AD would require a compliance time of 60 months to be consistent with the 60-month compliance time for installing the insulator and cable ties to the electrical cables of the S routes at the gaps in the raceway in the wing trailing edge and the wing tip and wing root areas specified in AD 2005–15–07. This difference has been coordinated with EASA.

Costs of Compliance

We estimate that this proposed AD affects 47 airplanes of U.S. registry.

The actions required by AD 2005–15–07, and retained in this proposed AD take about 35 work-hours per product, at an average labor rate of $85 per work-hour. Required parts cost about $0 per product. Based on these figures, the estimated cost of the actions that are required by AD 2005–15–07 is $2,975 per product.

We also estimate that it would take about 76 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $13,000 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $914,620, or $19,460 per product.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2005–15–07, Amendment 39–14196 (70 FR 43024, July 26, 2005), and adding the following new AD:

Airbus: Docket No. FAA–2016–5591; Directorate Identifier 2014–NM–193–AD.

(a) Comments Due Date

We must receive comments by June 6, 2016.

(b) Affected ADs

This AD replaces AD 2005–15–07, Amendment 39–14196 (70 FR 43024, July 26, 2005) ("AD 2005–15–07").

(c) Applicability

This AD applies to Airbus Model A320–211, –212, and –231 airplanes, certificated in any category, all manufacturer serial numbers except those on which Airbus Modification 22626 has been embodied in production.

(d) Subject

Air Transport Association (ATA) of America Code 24, Electrical Power; and Code 92.

(e) Reason

This AD was prompted by reports of wire chafing in the left-hand wing trailing edge. We are issuing this AD to prevent wire chafing in the trailing edge of the wings, which could result in a short circuit in the vicinity of the fuel tanks, consequently resulting in a potential source of ignition in a fuel tank vapor space and consequent fuel tank explosion.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Modification

This paragraph restates the requirements of paragraph (f) of AD 2005–15–07, with revised service information. Within 60 months after August 30, 2005 (the effective date of AD 2005–15–07), install insulator and cable ties to the electrical cables of the S routes at the gaps in the raceway in the wing trailing edge and the wing tip and wing root areas, in accordance with Airbus Service Bulletin A320–24–1062, Revision 05, dated June 27, 2002; or the Accomplishment Instructions of Airbus Service Bulletin A320–24–1062, Revision 07, dated November 28, 2011. As of the effective date of this AD, only Airbus Service Bulletin A320–24–1062, Revision 07, dated November 28, 2011, may be used.

(h) New Requirement of This AD: Modification of Trailing Edges

Within 60 months after the effective date of this AD, modify the trailing edges of both wings by accomplishing the actions specified in paragraphs (h)(1) and (h)(2) of this AD.

(1) Install the additional anti-chafing protection in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–92–1049, Revision 01, dated November 28, 2011.

(2) Replace the current electrical cable with the new standard one in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–92–1052, dated December 5, 2007. During the replacement, ensure that the anti-chafing protection specified in Airbus Service Bulletin A320–92–1049, as required by paragraph (h)(1) of this AD, remains in place.

(i) Additional Modification

For airplanes on which the installation specified in Airbus Service Bulletin A320–24–1062, Revision 05, dated June 27, 2002, has been done: Within 60 months after the effective date of this AD, install insulators and cable ties, in accordance with "Modification—Additional Work (Introduced at Revision No. 06)" of the Accomplishment Instructions of Airbus Service Bulletin A320–24–1062, Revision 07, dated November 28, 2011.

(j) Credit for Previous Actions

(1) This paragraph provides credit for actions required by paragraphs (g) and (i) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–24–1062, Revision 06, dated June 26, 2007, which is not incorporated by reference in this AD.

(2) This paragraph provides credit for actions required by paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Airbus Service Bulletin A320–92–1049, dated July 23, 2007, which is not incorporated by reference in this AD.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0198, dated September 5, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5591.

(2) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on April 4, 2016.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–08953 Filed 4–19–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5593; Directorate Identifier 2015–NM–184–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2015–02–23, for certain Bombardier, Inc. Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, and CL–601–3R Variants) airplanes. AD 2015–02–23 currently requires repetitive inspections for fractured or incorrectly oriented fasteners on the inboard flap hinge-box forward fittings on both wings, and replacement of all fasteners if necessary. The preamble to AD 2015–02–23 explains that we consider the requirements interim action and are considering further rulemaking. We now have determined that further rulemaking is indeed necessary, and that replacement of the fasteners is necessary. This proposed AD would require terminating action to replace the fasteners on the inboard flap hinge-box forward fittings on both wings. We are proposing this AD to detect and correct incorrectly oriented or fractured fasteners, which could result in detachment of the flap hinge-box and the flap surface, and consequent reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by June 6, 2016.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5593; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Aziz Ahmed, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7329; fax 516–794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–5593; Directorate Identifier 2015–NM–184–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On January 20, 2015, we issued AD 2015–02–23, Amendment 39–18092 (80 FR 5670, February 3, 2015) ("AD 2015–02–23"). AD 2015–02–23 requires actions intended to address an unsafe condition on certain Bombardier, Inc. Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, and CL–601–3R Variants) airplanes. AD 2015–02–23 corresponds to Canadian Emergency Airworthiness Directive CF–2013–39R2, dated December 12, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"). The MCAI was issued by Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada.

The preamble to AD 2015–02–23 explains that we consider the requirements interim action and are considering further rulemaking. We have now determined that further rulemaking is indeed necessary and that, instead of continuing repetitive inspections, replacement of the incorrectly oriented fasteners is necessary. This proposed AD follows from that determination. This proposed AD would require terminating action to replace the fasteners on the inboard flap hinge-box forward fittings on affected wings.

The repetitive inspections can only detect if a fastener head has fractured and sheared off. For incorrectly oriented fasteners, it is not possible to detect whether a crack has already initiated and propagated. The fastener fracture speed is unpredictable due to the variability in the quality of the hole preparation prior to fastener installation and whether there was any misalignment in the installation of the fasteners. The failure of two fasteners could result in the loss of the flap attachment, causing flap asymmetry and consequent reduced controllability of the airplane.

We are proposing this AD to detect and correct incorrectly oriented or fractured fasteners, which could result in detachment of the flap hinge-box and the flap surface, and consequent reduced controllability of the airplane.

Related Service Information Under 1 CFR Part 51

Bombardier has issued Alert Service Bulletins A600–0763, Revision 02, dated December 9, 2014, including Appendices 1 and 2, dated September 26, 2013; and A601–0627, Revision 02, dated December 9, 2014, including Appendices 1 and 2, dated September 26, 2013. The service information describes procedures for repetitive inspections of the fasteners on the inboard flap hinge-box forward fittings on both wings, and replacement of fasteners. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type designs.

Clarification of Intent of the MCAI

Paragraph C. of Canadian Emergency AD CF–2013–39R2, dated December 12, 2014, specifies to do the replacement on "both" wings. We have clarified with TCCA that the intent of paragraph C. of Canadian Emergency AD CF–2013–39R2, dated December 12, 2014, is that for airplanes on which any incorrectly oriented fastener, and no fractured or missing fastener, was detected, the replacement only needs to be done on the affected wing on which incorrectly oriented fasteners were found but none were found to be fractured.

The replacement of all forward and aft fasteners, regardless of condition or orientation, at wing station (WS) 76.50 and WS 127.25, on the affected wings, constitutes terminating action. Fasteners that have cracks or fractures were already addressed by the requirements of AD 2015–02–13, which is restated in this proposed AD.

Costs of Compliance

We estimate that this proposed AD affects 120 airplanes of U.S. registry.

The actions required by AD 2015–02–23, and retained in this proposed AD, take about 1 work-hour per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the actions that are required by AD 2015–02–23 is $85 per product.

We also estimate that it would take about 59 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. We have received no definitive data that would enable us to provide cost estimates for the parts cost. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $601,800, or $5,015 per product.

In addition, we estimate that any necessary follow-on actions will take about 58 work-hours and require parts costing $753, for a cost of $5,683 per product. We have no way of determining the number of aircraft that might need this action.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all available costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2015–02–23, Amendment 39–18092 (80 FR 5670, February 3, 2015), and adding the following new AD:

Bombardier, Inc.: Docket No. FAA–2016–5593; Directorate Identifier 2015–NM–184–AD.

(a) Comments Due Date

We must receive comments by June 6, 2016.

(b) Affected ADs

This AD replaces AD 2015–02–23, Amendment 39–18092 (80 FR 5670, February 3, 2015) ("AD 2015–02–23"). This AD affects AD 2014–03–17, Amendment 39–17754 (79 FR 9389, February 19, 2014) ("AD 2014–03–17").

(c) Applicability

This AD applies to the Bombardier, Inc. airplanes identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, certificated in any category.

(1) Bombardier, Inc. Model CL–600–1A11 (CL–600) airplanes, having serial numbers (S/Ns) 1004 through 1085 inclusive.

(2) Bombardier, Inc. Model CL–600–2A12 (CL–601) airplanes, having S/Ns 3001 through 3066 inclusive.

(3) Bombardier, Inc. Model CL–600–2B16 (CL–601–3A and CL–601–3R Variants) airplanes, having S/Ns 5001 through 5194 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Reason

This AD was prompted by reports of incorrectly oriented fasteners. We are issuing this AD to detect and correct incorrectly oriented or fractured fasteners, which could result in detachment of the flap hinge-box and the flap surface, and consequent reduced controllability of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Inspection on Airplanes Not Previously Inspected, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2015–02–23, with no changes. For airplanes that have not been inspected as required by paragraph (g) of AD 2014–03–17, as of February 18, 2015 (the effective date of AD 2015–02–23): Within 10 flight cycles after February 18, 2015, or 100 flight cycles after March 6, 2014 (the effective date of AD 2014–03–17), whichever occurs first, do a detailed visual inspection for incorrect orientation and any fractured or missing fastener heads of each inboard flap fastener of the hinge-box forward fitting at wing station (WS) 76.50 and WS 127.25, on both wings, in accordance with the Accomplishment Instructions of the applicable service information specified in paragraphs (g)(1) and (g)(2) of this AD. Accomplishing the inspection required by this paragraph terminates the requirements of paragraph (g) of AD 2014–03–17 for the inspected airplane only.

(1) For Model CL–600–1A11 (CL–600) airplanes having S/Ns 1004 through 1085 inclusive: Bombardier Alert Service Bulletin A600–0763, Revision 02, dated December 9, 2014, including Appendices 1 and 2, dated September 26, 2013.

(2) For Model CL–600–2A12 (CL–601) airplanes having S/Ns 3001 through 3066 inclusive, and Model CL–600–2B16 (CL–601–3A and CL–601–3R Variants) airplanes having S/Ns 5001 through 5194 inclusive: Bombardier Alert Service Bulletin A601–0627, Revision 02, dated December 9, 2014, including Appendices 1 and 2, dated September 26, 2013.

(h) Retained Corrective Actions for Paragraph (g) of This AD, With Revised Paragraph (h)(2) of This AD

(1) This paragraph restates the requirements of paragraph (h)(1) of AD 2015–02–23, with no changes. If, during any inspection required by paragraph (g) of this AD, all fasteners are found correctly oriented and not fractured, and no fastener heads are missing (fasteners found intact): No further action is required by this AD.

(2) This paragraph restates the requirements of paragraph (h)(2) of AD 2015–02–23, with revised references to replacement paragraphs. If, during any inspection required by paragraph (g) of this AD, any fastener is found incorrectly oriented but no fasteners are fractured or are missing a fastener head (fasteners found intact), repeat the inspection required by paragraph (g) of this AD thereafter at intervals not to exceed 10 flight cycles until the replacements specified in paragraph (h)(3), (k), or (n) of this AD is accomplished.

(3) This paragraph restates the requirements of paragraph (h)(3) of AD 2015–02–23, with no changes. If, during any inspection required by paragraph (g) of this AD, any fastener is found fractured or has a missing fastener head: Before further flight, remove and replace all forward and aft fasteners (regardless of orientation or condition) at WS 76.50 and WS 127.25, on both wings, in accordance with the Accomplishment Instructions of the applicable service information specified in paragraphs (h)(3)(i) and (h)(3)(ii) of this AD, except as required by paragraph (m) of this AD. After accomplishing the replacements required by this paragraph, no further action is required by this AD.

(i) For Model CL–600–1A11 (CL–600) airplanes having S/Ns 1004 through 1085 inclusive: Bombardier Alert Service Bulletin A600–0763, Revision 02, dated December 9, 2014, including Appendices 1 and 2, dated September 26, 2013.

(ii) For Model CL–600–2A12 (CL–601) airplanes having S/Ns 3001 through 3066 inclusive, and Model CL–600–2B16 (CL–601–3A and CL–601–3R Variants) airplanes having S/Ns 5001 through 5194 inclusive: Bombardier Alert Service Bulletin A601–0627, Revision 02, dated December 9, 2014, including Appendices 1 and 2, dated September 26, 2013.

(i) Retained Inspection for Airplanes Previously Inspected and Found To Have Incorrectly Oriented Fastener(s), With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2015–02–23, with no changes. For airplanes on which an inspection required by paragraph (g) or (j) of AD 2014–03–17, has been done as of the effective date of this AD, and on which any incorrectly oriented fastener was found but no fasteners were fractured (fasteners found intact): Except as provided by paragraph (l) of this AD, within 10 flight cycles after February 18, 2015 (the effective date of AD 2015–02–23), or within 100 flight cycles after accomplishing the most recent inspection required by AD 2014–03–17, whichever occurs first, do a detailed visual inspection for any fractured or missing fastener heads of each inboard flap fastener of the hinge-box forward fitting at WS 76.50 and WS 127.25, on both wings. Do the inspection in accordance with the Accomplishment Instructions of the applicable service information specified in paragraphs (i)(1) and (i)(2) of this AD. Accomplishing the inspection required by this paragraph terminates the requirements of paragraphs (g) and (j) of AD 2014–03–17 for the inspected airplane only.

(1) For Model CL–600–1A11 (CL–600) airplanes having S/Ns 1004 through 1085 inclusive: Bombardier Alert Service Bulletin A600–0763, Revision 02, dated December 9, 2014, including Appendices 1 and 2, dated September 26, 2013.

(2) For Model CL–600–2A12 (CL–601) airplanes having S/Ns 3001 through 3066 inclusive, and Model CL–600–2B16 (CL–601–3A and CL–601–3R Variants) airplanes having S/Ns 5001 through 5194 inclusive: Bombardier Alert Service Bulletin A601–0627, Revision 02, dated December 9, 2014, including Appendices 1 and 2, dated September 26, 2013.

(j) Retained Corrective Actions for Paragraph (i) of This AD, With Revised Reference to Additional, New Requirements

(1) This paragraph restates the requirements of paragraph (j)(1) of AD 2015–02–23, with revised reference to additional, new requirements. If, during any inspection required by paragraph (i) of this AD, no fasteners are found fractured or have missing fastener heads (fasteners are intact), repeat the inspection required by paragraph (i) of this AD thereafter at intervals not to exceed 10 flight cycles until the replacement specified in paragraph (j)(2), (k), or (n) of this AD is accomplished.

(2) This paragraph restates the requirements of paragraph (j)(2) of AD 2015–02–23, with no changes. If, during any inspection required by paragraph (i) of this AD, any fastener is found fractured or has a missing fastener head: Before further flight, remove and replace all forward and aft fasteners (regardless of orientation or condition) at WS 76.50 and WS 127.25, on both wings, in accordance with the Accomplishment Instructions of the applicable service information specified in paragraphs (j)(2)(i) and (j)(2)(ii) of this AD, except as required by paragraph (m) of this AD. After accomplishing the replacements required by this paragraph, no further action is required by this AD.

(i) For Model CL–600–1A11 (CL–600) airplanes having S/Ns 1004 through 1085 inclusive: Bombardier Alert Service Bulletin A600–0763, Revision 02, dated December 9, 2014, including Appendices 1 and 2, dated September 26, 2013.

(ii) For Model CL–600–2A12 (CL–601) airplanes having S/Ns 3001 through 3066 inclusive, and Model CL–600–2B16 (CL–601–3A and CL–601–3R Variants) airplanes having S/Ns 5001 through 5194 inclusive: Bombardier Alert Service Bulletin A601–0627, Revision 02, dated December 9, 2014, including Appendices 1 and 2, dated September 26, 2013.

(k) Retained Optional Terminating Action for Incorrectly Oriented Fasteners, With No Changes

This paragraph restates the provisions of paragraph (k) of AD 2015–02–23, with no changes. Replacement of all forward and aft fasteners (regardless of orientation or condition) at WS 76.50 and WS 127.25, on both wings, terminates the requirements of this AD. The replacement must be done in accordance with the Accomplishment Instructions of the applicable service information specified in paragraphs (k)(1) and (k)(2) of this AD, except as provided by paragraph (m) of this AD. Doing the replacements specified in this paragraph terminates the requirements of paragraphs (g) and (j) of AD 2014–03–17, only for the airplane on which the replacement was done.

(1) For Model CL–600–1A11 (CL–600) airplanes having S/Ns 1004 through 1085 inclusive: Bombardier Alert Service Bulletin A600–0763, Revision 02, dated December 9, 2014, including Appendices 1 and 2, dated September 26, 2013.

(2) For Model CL–600–2A12 (CL–601) airplanes having S/Ns 3001 through 3066 inclusive, and Model CL–600–2B16 (CL–601–3A and CL–601–3R Variants) airplanes having S/Ns 5001 through 5194 inclusive: Bombardier Alert Service Bulletin A601–0627, Revision 02, dated December 9, 2014, including Appendices 1 and 2, dated September 26, 2013.

(l) Retained Exception for Previously Replaced Fasteners, With No Changes

This paragraph restates the provisions of paragraph (l) of AD 2015–02–23, with no changes. Replacement of all fractured and incorrectly oriented forward and aft fasteners, as specified in paragraph (i) or (k) of AD 2014–03–17, if done before the effective date of this AD, is considered acceptable for compliance with the requirements of this AD.

(m) Retained Exception to the Service Information, With No Changes

This paragraph restates the requirements of paragraph (m) of AD 2015–02–23, with no changes. Where Bombardier Alert Service Bulletin A600–0763, Revision 02, dated December 9, 2014, including Appendices 1 and 2, dated September 26, 2013; and Bombardier Alert Service Bulletin A601–0627, Revision 02, dated December 9, 2014, including Appendices 1 and 2, dated September 26, 2013; specify to contact Bombardier for repair instructions, before further flight, repair using a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier's TCCA Design Approval Organization (DAO).

(n) New Requirement of This AD: Terminating Action

For airplanes on which any incorrectly oriented fastener, and no fractured or missing fastener, was detected during any inspection required by paragraph (g), (h)(2), (i), and (j)(1) of this AD: Within 24 months after the effective date of this AD, replace all forward and aft fasteners, regardless of condition or orientation, at WS 76.50 and WS 127.25, on affected wings, in accordance with the Accomplishment Instructions of the applicable service information specified in paragraphs (k)(1) and (k)(2) of this AD, except as provided by paragraph (m) of this AD. Doing the replacements specified in this paragraph terminates the requirements of this AD. Doing the replacements specified in this paragraph terminates the requirements of paragraphs (g) and (j) of AD 2014–03–17, only for the airplane on which the replacement was done.

(o) Credit for Previous Actions

This paragraph restates the provisions of paragraph (n) of AD 2015–02–23, with new credit for paragraph (n) of this AD. This paragraph provides credit for actions required by paragraphs (g), (h), (i), and (n) of this AD, if those actions were performed before the effective date of this AD using the applicable service information identified in paragraphs (o)(1) through (o)(4) of this AD.

(1) Bombardier Alert Service Bulletin A600–0763, including Appendices 1 and 2, dated September 26, 2013, which was previously incorporated by reference on March 6, 2014 (79 FR 9389, February 19, 2014).

(2) Bombardier Alert Service Bulletin A600–0763, Revision 01, dated February 26, 2014, including Appendices 1 and 2, dated September 26, 2013, which is not incorporated by reference in this AD.

(3) Bombardier Alert Service Bulletin A601–0627, including Appendices 1 and 2, dated September 26, 2013, which was previously incorporated by reference on March 6, 2014 (79 FR 9389, February 19, 2014).

(4) Bombardier Alert Service Bulletin A601–0627, Revision 01, dated February 26, 2014, including Appendices 1 and 2, dated September 26, 2013, which is not incorporated by reference in this AD.

(p) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, Engine and Propeller Directorate, FAA; or TCCA; or Bombardier, Inc.'s TCCA DAO. If approved by the DAO, the approval must include the DAO-authorized signature.

(q) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Emergency Airworthiness Directive CF–2013–39R2, dated December 12, 2014, for related information. This MCAI may be

found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5593.

(2) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on April 8, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–08960 Filed 4–19–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5464; Directorate Identifier 2015–NM–097–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2011–10–01, for all Dassault Aviation Model FALCON 7X airplanes. AD 2011–10–01 currently requires repetitive functional tests of the ram air turbine (RAT) heater and repair if necessary. Since we issued AD 2011–10–01, we received a revision of an airworthiness limitations items (ALI) document, which introduces new and more restrictive maintenance requirements and airworthiness limitations for airplane structures and systems. This proposed AD would require revising the maintenance or inspection program to incorporate new maintenance requirements and airworthiness limitations. We are proposing this AD to prevent reduced structural integrity and reduced control of these airplanes due to the failure of system components.

DATES: We must receive comments on this proposed AD by June 6, 2016.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone: 201–440–6700; Internet: *http://www.dassaultfalcon.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5464; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–5464; Directorate Identifier 2015–NM–097–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On April 20, 2011, we issued AD 2011–10–01, Amendment 39–16682 (76 FR 25535, May 5, 2011). AD 2011–10–01 requires actions intended to address an unsafe condition on all Dassault Aviation Model FALCON 7X airplanes. Since we issued AD 2011–10–01, we received a revision of an ALI document, Chapter 5–40–00, Airworthiness Limitations, DGT 107838, Revision 4, dated February 2, 2015, of the Dassault Falcon 7X Maintenance Manual, which introduces new and more restrictive maintenance requirements and airworthiness limitations.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive AD 2015–0095, dated May 29, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition for all Dassault Aviation FALCON 7X airplanes. The MCAI states:

> The airworthiness limitations and maintenance requirements for the FALCON 7X type design are included in Dassault Aviation FALCON 7X Aircraft Maintenance Manual (AMM) chapter 5–40 and are approved by EASA. To ensure accomplishment of the maintenance tasks, and implementation of the airworthiness limitations, as specified in Dassault Aviation FALCON 7X AMM chapter 5–40 original issue, including temporary revision (TR) TR–01, EASA issued AD 2008–0221 [*http://ad.easa.europa.eu/ad/2008-0221*].
>
> Since that [EASA] AD was issued, Dassault Aviation issued revision 4 of the FALCON 7X AMM chapter 5–40, which introduces new and more restrictive maintenance requirements and/or airworthiness limitations.
>
> Dassault Aviation AMM chapter 5–40 revision 4 contains, among others, the following changes:
>
> —Fatigue and Damage tolerance airworthiness limitations,
>
> —Miscellaneous Certification Maintenance Requirements and Airworthiness Limitation Items,
>
> —Periodic restoration of the DC generators (this action was required by EASA AD 2009–0254) [*http://ad.easa.europa.eu/ad/2009-0254*],
>
> —Functional test of the Ram Air Turbine heater (this action was required by EASA AD 2010–0033) [*http://ad.easa.europa.eu/ad/2010-0233*] [which corresponds to FAA AD 2011–10–01, Amendment 39–16682 (76 FR 25535, May 5, 2011)],

—Special detailed fatigue inspection of fastener holes at front spar/wing lower panel connections at RIB 26,
—Operational test of the IRS3 power supply weight-on- wheel logic,
—Inspection of the interface between wheel keys and brake inboard rotor,
—Operational test of the Horizontal Stabilizer Trim Actuator (HSTA) electrical motor reversion,
—Operational test of the HSTA trim emergency command,
—Detailed inspection of the brake heat sink.

The maintenance tasks and airworthiness limitations, as specified in the FALCON 7X AMM chapter 5–40, have been identified as mandatory actions for continued airworthiness of the FALCON 7X type design. Failure to accomplish the actions specified in AMM chapter 5–40 at revision 4 may result in an unsafe condition.

For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2009–0254 and EASA AD 2010–0033, which are superseded, and requires accomplishment of the maintenance tasks and airworthiness limitations, as specified in Dassault Aviation FALCON 7X AMM chapter 5–40 at revision 4.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5464.

This AD requires revisions to certain operator maintenance documents to include new actions (*e.g.*, inspections) and/or Critical Design Configuration Control Limitations (CDCCLs). Compliance with these actions and/or CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (k)(1) of this proposed AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Notwithstanding any other maintenance or operational requirements, components that have been identified as airworthy or installed on the affected airplanes before accomplishing the revision of the airplane maintenance or inspection program specified in this proposed AD, do not need to be reworked in accordance with the CDCCLs. However, once the airplane maintenance or inspection program or airworthiness limitations section (ALS) has been revised as required by this proposed AD, future maintenance actions on these components must be done in accordance with the CDCCLs.

Related Service Information Under 1 CFR Part 51

Dassault Aviation issued Chapter 5–40–00, Airworthiness Limitations, DGT 107838, Revision 4, dated February 2, 2015, of the Dassault Falcon 7X Maintenance Manual, which introduces new and more restrictive maintenance requirements and airworthiness limitations for airplane structures and systems. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Costs of Compliance

We estimate that this proposed AD affects 45 airplanes of U.S. registry.

The actions required by AD 2011–10–01, Amendment 39–16682 (76 FR 25535, May 5, 2011), and retained in this proposed AD take about 1 work-hour per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the actions that are required by AD 2011–10–01 is $85 per product.

We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $3,825, or $85 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2011–10–01, Amendment 39–16682 (76 FR 25535, May 5, 2011), and adding the following new AD:

Dassault Aviation: Docket No. FAA–2016–5464; Directorate Identifier 2015–NM–097–AD.

(a) Comments Due Date

We must receive comments by June 6, 2016.

(b) Affected ADs

This AD replaces AD 2011–10–01, Amendment 39–16682 (76 FR 25535, May 5, 2011). This AD affects AD 2014–16–23, Amendment 39–17947 (79 FR 52545, September 4, 2014).

(c) Applicability

This AD applies to Dassault Aviation Model FALCON 7X airplanes, certificated in any category, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by a revision of an airworthiness limitations items (ALI) document, which introduces new and more restrictive maintenance requirements and airworthiness limitations for airplane structures and systems. We are issuing this AD to prevent reduced structural integrity and reduced control of these airplanes due to the failure of system components.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Functional Test of the Ram Air Turbine (RAT) Heater With New Terminating Action and With Specific Delegation Approval Language

This paragraph restates the requirements of paragraph (g) of AD 2011–10–01, Amendment 39–16682 (76 FR 25535, May 5, 2011), with new terminating action and with specific delegation approval language. At the applicable times specified in paragraph (g)(1) or (g)(2) of this AD, do a functional test of the RAT heater using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Dassault Aviation's EASA Design Organization Approval (DOA). Repeat the functional test of the RAT heater thereafter at the applicable time specified in paragraph (g)(1) or (g)(2) of this AD until the revision required by paragraph (h) of this AD is done. If any functional test fails, before further flight, repair using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Dassault Aviation's EASA DOA.

(1) For FALCON 7X airplanes on which modification M0305 has not been done and on which Dassault Service Bulletin 7X–018, dated March 6, 2009, has not been done: Within 650 flight hours after the effective date of this AD, do a functional test of the RAT heater and repeat the functional test of the RAT heater thereafter at intervals not to exceed 650 flight hours.

(2) For FALCON 7X airplanes on which modification M0305 has been done or on which Dassault Service Bulletin 7X–018, dated March 6, 2009, has been done: Within 1,900 flight hours after June 9, 2011 (the effective date of AD 2011–10–01, Amendment 39–16682 (76 FR 25535, May 5, 2011)) or after modification M0305 or Dassault Service Bulletin 7X–018, dated March 6, 2009, has been done, whichever occurs later, do a functional test of the RAT heater. Repeat the functional test of the RAT heater thereafter at intervals not to exceed 1,900 flight hours.

Note 1 to paragraph (g) of this AD: Additional guidance for doing the functional test of the RAT heater required by paragraph (g) of this AD can be found in Task 24–50–25–720–801, Functional Test of the RAT Heater, dated January 16, 2009, of the Dassault FALCON 7X Aircraft Maintenance Manual (AMM).

(h) New Requirement of This AD: Revise the Maintenance or Inspection Program

Within 30 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, by incorporating the information specified in Chapter 5–40–00, Airworthiness Limitations, DGT 107838, Revision 4, dated February 2, 2015, of the Dassault Falcon 7X Maintenance Manual (MM). The initial compliance times for the tasks specified in Chapter 5–40–00, Airworthiness Limitations, DGT 107838, Revision 4, dated February 2, 2015, of the Dassault Falcon 7X MM are at the applicable compliance times specified in Chapter 5–40–00, Airworthiness Limitations, DGT 107838, Revision 4, dated February 2, 2015, of the Dassault Falcon 7X MM, or within 30 days after the effective date of this AD, whichever occurs later.

(i) Terminating Actions

(1) Accomplishment of the revision required by paragraph (h) of this AD terminates the requirements of paragraph (g) of this AD.

(2) Accomplishment of the revision required by paragraph (h) of this AD terminates the requirements of paragraph (q) of AD 2014–16–23, Amendment 39–17947 (79 FR 52545, September 4, 2014).

(j) No Alternative Actions, Intervals, and/or Critical Design Configuration Control Limitations (CDCCLs)

After the maintenance or inspection program, as applicable, has been revised as required by paragraph (h) of this AD, no alternative actions (*e.g.*, inspections), intervals, and/or CDCCLs may be used unless the actions, intervals, and/or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k)(1) of this AD.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.*

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Dassault Aviation's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(l) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2015–0095, dated May 29, 2015, for related information. You may examine the MCAI on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5464.

(2) For service information identified in this AD, contact Dassault Falcon Jet Corporation, Teterboro Airport, P.O. Box 2000, South Hackensack, NJ 07606; telephone: 201–440–6700; Internet: *http://www.dassaultfalcon.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on April 13, 2016.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–09005 Filed 4–19–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5465; Directorate Identifier 2015–NM–041–AD]

RIN 2120–AA64

Airworthiness Directives; BAE SYSTEMS (Operations) Limited Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to supersede Airworthiness Directive (AD) 2010–10–13, for all BAE SYSTEMS (Operations) Limited Model BAe 146 and Avro 146 series airplanes. AD 2010–10–13 currently requires repetitive inspections

of the wing fixed leading edge and front spar structure for corrosion and cracking, and repair if necessary. Since we issued AD 2010–10–13, the Design Approval Holder (DAH) has issued revised inspection procedures that eliminate a previously approved inspection procedure. This proposed AD would require revised inspection procedures. We are proposing this AD to detect and correct corrosion and cracking of the wing fixed leading edge and front spar structure, which could result in reduced structural integrity of the wing.

DATES: We must receive comments on this proposed AD by June 6, 2016.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact BAE Systems (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com;* Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5465; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1175; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–5465; Directorate Identifier 2015–NM–041–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

On April 30, 2010, we issued AD 2010–10–13, Amendment 39–16292 (75 FR 27419, May 17, 2010) ("AD 2010–10–13"). AD 2010–10–13 requires actions intended to address an unsafe condition on all BAE SYSTEMS (Operations) Limited Model BAe 146 and Avro 146 series airplanes.

Since we issued AD 2010–10–13, the DAH has issued revised inspection procedures that eliminates a previously approved inspection procedure.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0047, correction dated February 26, 2015 (referred to after this as the Mandatory Continuing Airworthiness Information, or "the MCAI"), to correct an unsafe condition. The MCAI states:

> Corrosion of the wing fixed leading edge structure was detected on a BAe 146 aeroplane during removal of wing removable edge for a repair. The review of available scheduled tasks intended to detect environmental and fatigue deteriorations of the wing revealed that they may not have been sufficient to identify corrosion or fatigue damage in the affected structural area.
>
> This condition, if not detected and corrected, could lead to degradation of the structural integrity of the wing.
>
> To address this potential unsafe condition, EASA issued AD 2009–0014 (*http://ad.easa.europa.eu/blob/easa_ad_2009_0014_superseded.pdf/AD_2009–0014_1*) [which corresponds to FAA AD 2010–10–13] to require repetitive inspections of fixed wing leading edge and front spar structure [for cracking and corrosion] [and repair if necessary] in accordance with BAE Systems (Operations) Ltd Inspection Service Bulletin (ISB) ISB.57–072 which incorporated two possible inspection procedures, either method 1, a combination of a detailed visual inspection (DVI) and a visual inspection (VI) after removal of the outer fixed leading edge only, or method 2, a DVI only, after removal of the inner, centre and outer fixed leading edges.
>
> Since that [EASA] AD was issued, BAE Systems (Operations) Ltd issued ISB.57–072 Revision 1 to correct a material reference number, Revision 2, which removed method 1 as an available inspection procedure to detect fatigue and environmental damage of the wing structure and Revision 3 to delete the requirement to install weights if the engines were removed when the leading edges were removed.
>
> For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2009–0014, which is superseded, but requires accomplishment of the [repetitive] inspections in accordance with updated inspection procedures, *i.e.* method 2 only.
>
> This [EASA] AD is re-published to correct a typographical error in Table 1, restoring a compliance time as previously required by EASA AD 2009–0014.

The repetitive inspection interval for the detailed visual inspection for cracking and corrosion of the wing fixed leading edge and front spar structure is:

- 12 years or 36,000 flight cycles, whichever occurs earlier, for airplanes on which the enhanced corrosion protection has not been accomplished.
- 6 years or 36,000 flight cycles, whichever occurs earlier, for airplanes on which the enhanced corrosion protection has been accomplished.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5465.

Related Service Information Under 1 CFR Part 51

BAE SYSTEMS (Operations) Limited has issued Service Bulletin ISB.57–072, Revision 3, dated August 31, 2010. The service information describes procedures for inspection and repair for cracking and corrosion of the wing fixed leading edge and front spar structure. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Costs of Compliance

We estimate that this proposed AD affects 4 airplanes of U.S. registry.

The actions required by AD 2010–10–13, and retained in this proposed AD take about 12 work-hours per product, and 1 work-hour per product for reporting, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the actions that are required by AD 2010–10–13 is $1,105 per product.

The new requirements of this proposed AD add no additional economic burden.

We have received no definitive data that would enable us to provide cost estimates for the on-condition actions specified in this proposed AD.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The control number for the collection of information required by this AD is 2120–0056. The paperwork cost associated with this AD has been detailed in the Costs of Compliance section of this document and includes time for reviewing instructions, as well as completing and reviewing the collection of information. Therefore, all reporting associated with this AD is mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at 800 Independence Ave. SW., Washington, DC 20591, ATTN: Information Collection Clearance Officer, AES–200.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2010–10–13, Amendment 39–16292 (75 FR 27419, May 17, 2010), and adding the following new AD:

BAE SYSTEMS (Operations) Limited: Docket No. FAA–2016–5465; Directorate Identifier 2015–NM–041–AD.

(a) Comments Due Date

We must receive comments by June 6, 2016.

(b) Affected ADs

This AD replaces AD 2010–10–13, Amendment 39–16292 (75 FR 27419, May 17, 2010) ("AD 2010–10–13").

(c) Applicability

This AD applies to BAE SYSTEMS (Operations) Limited Model BAe 146–100A, –200A, and –300A series airplanes; and Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes; certificated in any category, all serial numbers.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Reason

This AD was prompted by revised inspection procedures issued by the Design Approval Holder. We are issuing this AD to detect and correct corrosion and cracking of the wing fixed leading edge and front spar structure, which could result in reduced structural integrity of the airplane.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Retained Actions and Compliance, With Added Provision for Terminating Action

This paragraph restates the requirements of paragraph (f) of AD 2010–10–13, with an added provision for terminating action. Accomplishing the initial inspection required by paragraph (j) of this AD terminates the requirements of paragraph (g) of this AD.

(1) At the applicable time identified in paragraph (g)(1)(i), (g)(1)(ii), or (g)(1)(iii) of this AD: Perform a detailed visual inspection and visual inspection (Method 1) or a detailed visual inspection (Method 2) for cracking and corrosion of the wing fixed leading edge and front spar structure, in accordance with paragraph 2.C. or 2.D., as applicable, of the Accomplishment Instructions of BAE SYSTEMS (Operations) Limited Inspection Service Bulletin ISB.57–072, Revision 1, dated September 25, 2008.

(i) For airplanes with less than 9 years since date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness as of the effective date of this AD: Within 18 months after June 21, 2010 (the effective date of AD 2010–10–13).

(ii) For airplanes with 9 years or more, but less than 15 years, since date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness as of June 21, 2010 (the effective date of AD 2010–10–13): Within 18 months after June 21, 2010, or within 16 years since date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness, whichever occurs first.

(iii) For airplanes with 15 years or more since date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness as of June 21, 2010 (the effective date of AD 2010–10–13): Within 6 months after June 21, 2010.

(2) After doing the initial inspection required by paragraph (g)(1) of this AD, at the applicable intervals specified in paragraph (g)(2)(i) or (g)(2)(ii) of this AD, accomplish the repetitive inspections of the wing fixed leading edge and front spar structure for cracking and corrosion in the "area of inspection" specified in Table 1 of paragraph 1.D., "Compliance," of BAE SYSTEMS (Operations) Limited Inspection Service Bulletin ISB.57–072, Revision 1, dated September 25, 2008. Do the inspections in accordance with paragraph 2.C. (Method 1) or paragraph 2.D. (Method 2) of the Accomplishment Instructions of BAE SYSTEMS (Operations) Limited Inspection Service Bulletin ISB.57–072, Revision 1, dated September 25, 2008. Where previously applied, enhanced corrosion protection may then be re-applied, as an option, in accordance with paragraph 2.E. of the Accomplishment Instructions of BAE SYSTEMS (Operations) Limited Inspection Service Bulletin ISB.57–072, Revision 1, dated September 25, 2008. Perform the repetitive inspections at the times specified in paragraph (g)(2)(i) or (g)(2)(ii) of this AD, as applicable.

(i) For airplanes having enhanced corrosion protection that was applied during the previous inspection: Inspect at intervals not to exceed 144 months.

(ii) For airplanes not having enhanced corrosion protection that was applied during the previous inspection: Inspect at intervals not to exceed 72 months.

(3) After doing the initial inspection required by paragraph (g)(1) of this AD, at intervals not to exceed 36,000 flight cycles, accomplish fatigue inspections in accordance with paragraph 2.C. (Method 1) or paragraph 2.D. (Method 2) of the Accomplishment Instructions of BAE SYSTEMS (Operations) Limited Inspection Service Bulletin ISB.57–072, Revision 1, dated September 25, 2008.

(4) If any cracking or corrosion is found during any inspection required by paragraph (g) of this AD, before further flight, repair in accordance with the Accomplishment Instructions of BAE SYSTEMS (Operations) Limited Inspection Service Bulletin ISB.57–072, Revision 1, dated September 25, 2008.

(5) No repair terminates the inspection requirements of this AD.

(6) Actions done before June 21, 2010 (the effective date of AD 2010–10–13), in accordance with BAE SYSTEMS (Operations) Limited Inspection Service Bulletin ISB.57–072, dated February 22, 2008, are considered acceptable for compliance with the corresponding actions specified in this AD.

(7) Submit a report of the findings (both positive and negative) of the inspection required by paragraph (f)(1) of this AD to Customer Liaison, Customer Support (Building 37), BAE SYSTEMS (Operations) Limited, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; fax +44 (0) 1292 675432; email *raengliaison@baesystems.com,* at the applicable time specified in paragraphs (g)(7)(i) and (g)(7)(ii) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane.

(i) If the inspection was done on or after June 21, 2010 (the effective date of AD 2010–10–13): Submit the report within 30 days after the inspection.

(ii) If the inspection was done before June 21, 2010 (the effective date of AD 2010–10–13): Submit the report within 30 days after June 21, 2010.

(h) Retained Corrosion Protection Information, With No Changes

This paragraph restates the corrosion protection information in Note 2 of AD 2010–10–13, with no changes. At the discretion of the airplane owner/operator, corrosion protection may be embodied on those areas subject to a detailed visual inspection, in accordance with paragraph 2.E. or paragraph 2.F. of the Accomplishment Instructions of BAE SYSTEMS (Operations) Limited Inspection Service Bulletin ISB.57–072, Revision 1, dated September 25, 2008. Embodiment of enhanced corrosion protection in accordance with paragraph 2.E. of the Accomplishment Instructions of BAE SYSTEMS (Operations) Limited Inspection Service Bulletin ISB.57–072, Revision 1, dated September 25, 2008, allows the interval of the repetitive inspection (as required by paragraph (g)(2) of this AD) to be extended in the area(s) of application in accordance with paragraph (g)(2)(i) or (g)(2)(ii) of this AD, as applicable.

(i) Retained Inspection Information, With No Changes

This paragraph restates the inspection information in Note 3 of AD 2010–10–13, with no changes. The inspections required by this AD prevail over the Maintenance Review Board Report (MRBR), Maintenance Planning Document (MPD), Corrosion Prevention and Control Program (CPCP), and Supplemental Structural Inspection Document (SSID) inspections defined in paragraph 1.C.(3) of BAE SYSTEMS (Operations) Limited Inspection Service Bulletin ISB.57–072, Revision 1, dated September 25, 2008.

(j) New Requirement of This AD: Repetitive Inspection

At the applicable time identified in paragraph (j)(1), (j)(2), or (j)(3) of this AD; or within 6 months after the effective date of this AD; whichever occurs later: Perform a detailed visual inspection for cracking and corrosion of the wing fixed leading edge and front spar structure, in accordance with paragraph 2.C. of the Accomplishment Instructions of BAE SYSTEMS (Operations) Limited Inspection Service Bulletin ISB.57–072, Revision 3, dated August 31, 2010. Repeat the inspection thereafter at the applicable intervals specified in paragraph 1.D.2. of BAE SYSTEMS (Operations) Limited Inspection Service Bulletin ISB.57–072, Revision 3, dated August 31, 2010. Accomplishing the initial inspection required by this paragraph terminates the requirements of paragraph (g) of this AD.

(1) For airplanes with less than 9 years since date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness as of June 21, 2010 (the effective date of AD 2010–10–13): Within 18 months after June 21, 2010, or within 9 years since date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness, whichever occurs later.

(2) For airplanes with 9 years or more, but less than 15 years, since date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness as of June 21, 2010 (the effective date of AD 2010–10–13): Within 18 months after June 21, 2010, or within 16 years since date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness, whichever occurs first.

(3) For airplanes with 15 years or more since date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness as of the June 21, 2010 (the effective date of AD 2010–10–13): Within 6 months after June 21, 2010.

(k) New Requirement of This AD: Repair

If any crack or corrosion are found during any inspection required by paragraph (j) of this AD: Before further flight, repair using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or BAE SYSTEMS (Operations) Limited's EASA Design Organization Approval (DOA).

(l) No Provisions for Terminating Action

Accomplishment of any repair, as required by paragraph (k) of this AD, does not constitute terminating action for inspections required by this AD.

(m) Credit for Previous Actions

This paragraph provides credit for actions required by this AD, if those actions were performed before the effective date of this AD using BAE SYSTEMS (Operations) Limited Inspection Service Bulletin ISB.57–072, dated February 22, 2008; or BAE SYSTEMS (Operations) Limited Inspection Service Bulletin ISB.57–072, Revision 1, dated September 25, 2008.

(n) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1175; fax 425–227–1149.

Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the EASA; or BAE SYSTEMS (Operations) Limited's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(o) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0047, correction dated February 26, 2015, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5465.

(2) For service information identified in this AD, contact BAE Systems (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com;* Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm*. You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on March 26, 2016.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–08957 Filed 4–19–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5595; Directorate Identifier 2015–NM–087–AD]

RIN 2120–AA64

Airworthiness Directives; Zodiac Seats California LLC Seating Systems

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Zodiac Seats California LLC seating systems. This proposed AD was prompted by a determination that the affected seating systems may cause serious injury to the occupant during forward impacts when subjected to certain inertia forces. This proposed AD would require removing affected seating systems. We are proposing this AD to prevent serious injury to the occupant during forward impacts in emergency landing conditions.

DATES: We must receive comments on this proposed AD by June 6, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5595; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Patrick Farina, Aerospace Engineer, Cabin Safety Branch, ANM–150L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5344; fax: 562–627–5210; email: *patrick.farina@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–5595; Directorate Identifier 2015–NM–087–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We determined that occupants of certain Zodiac Seats California LLC seating systems having model numbers 4157, 4170, and 4184, may experience serious injury during forward impacts when subjected to inertia forces as defined by 14 CFR 25.561 and 14 CFR 25.562 (and thus are noncompliant with 14 CFR 25.785). The affected seating systems are installed on, but not limited to, various transport category airplanes.

The impact of the head onto a typical transport passenger seat back during seat qualification testing normally results in an initial contact followed by an unimpeded sliding motion down the back of the seat. That type of interaction does not typically result in excessive neck loading or direct concentrated loading on the neck. The design of the affected seating systems introduce new injury mechanisms such that the chin can catch on the seat, causing high neck bending loads and direct concentrated loading on the neck. This interaction between the head and the seat during forward impacts can result in serious injury to the occupant.

14 CFR 25.785 states that seat designs cannot cause a serious injury to the occupant when making proper use of the seat and restraint and subjected to the inertia forces specified in 14 CFR

25.561 and 14 CFR 25.562. Specifically, 14 CFR 25.785(b) states:

> Each seat, berth, safety belt, harness, and adjacent part of the airplane at each station designated as occupiable during takeoff and landing must be designed so that a person making proper use of these facilities will not suffer serious injury in an emergency landing as a result of the inertia forces specified in sections 25.561 and 25.562.

Use of the affected seating systems could result in serious injury to the occupant during forward impacts in emergency landing conditions.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

Proposed AD Requirements

This proposed AD would require removing affected seating systems.

Costs of Compliance

We estimate that this proposed AD affects 10,482 seating systems installed on but not limited to various transport category airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Removal	1 work-hour × $85 per hour = $85	$0	$85	$890,970

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Zodiac Seats California LLC: Docket No. FAA–2016–5595; Directorate Identifier 2015–NM–087–AD.

(a) Comments Due Date

We must receive comments by June 6, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Zodiac Seats California LLC seating systems, having model numbers and part numbers identified in table 1 to paragraphs (c), (g), (i), (j) and (k) of this AD, installed on, but not limited to, the airplanes identified in paragraphs (c)(1) through (c)(9) of this AD, all type certificated models in any category.

(1)The Boeing Company Model 717–200 airplanes.

(2) Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes.

(3) Bombardier, Inc. Model CL–600–2D24 (Regional Jet Series 900) airplanes.

(4) Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes.

(5) Empresa Brasileira de Aeronautica S.A. (Embraer) Model EMB–145XR airplanes.

(6) Embraer S.A. Model ERJ 170–100 LR airplanes.

(7) Embraer S.A. Model ERJ 170–200 LR, and –200 STD airplanes.

(8) Embraer S.A. Model ERJ 190–100 STD, –100 LR, and –100 IGW airplanes.

(9) Embraer S.A. Model ERJ 190–200 LR airplanes.

TABLE 1 TO PARAGRAPHS (c), (g), (i), (j) AND (k) OF THIS AD—AFFECTED SEATING SYSTEMS

Model No.	Part No.	Description
4157	4157()–()–()	Double Seat Assembly System.
4157	4158()–()–()	Double Seat Assembly System.
4157	4175()–()–()	Double Seat Assembly System.
4157	4176()–()–()	Double Seat Assembly System.
4157	4177()–()–()	Double Seat Assembly System.
4157	4178()–()–()	Double Seat Assembly System.
4170	4170()–()	Triple Seat Assembly System.
4170	4169()–()	Double Seat Assembly System.
4170	4171()–()	Single Seat Assembly System Exit Row.
4170	4172()–()	Double Seat Assembly System Exit Row.
4184	4184()–()–()	Double Seat Assembly System.

(d) Subject

Air Transport Association (ATA) of America Code 2520, Passenger Compartment Equipment.

(e) Unsafe Condition

This proposed AD was prompted by a determination that the affected seating systems may cause serious injury to the occupant during forward impacts when subjected to certain inertia forces. We are issuing this AD to prevent serious injury to the occupant during forward impacts in emergency landing conditions.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Seating System Removal

Within 60 months after the effective date of this AD, remove all seating systems having a model number and part number identified in table 1 to paragraphs (c), (g), (i), (j), and (k) of this AD.

(h) Definition of a Direct Spare

For the purposes of this AD, a "direct" spare has the same part number as the part it replaces.

(i) Parts Installation Limitations: Seating Systems

As of the effective date of this AD, no person may install on any airplane any Zodiac Seats California LLC seating systems having any model number and part number identified in table 1 to paragraphs (c), (g), (i), (j), and (k) of this AD that are approved under TSO–C127a; except as specified in paragraphs (i)(1) and (i)(2) of this AD.

(1) Seating systems may be removed from service for the purpose of performing maintenance activities and reinstalled on airplanes operated by the same operator but only until the operator complies with the removal of affected seating systems required by paragraph (g) of this AD.

(2) New seating systems may be installed as direct spares for the same part number seating systems but only until the operator complies with the removal of affected seating systems required by paragraph (g) of this AD. Seating systems installed as direct spares are subject to the applicable requirements and compliance times specified in this AD.

(j) Parts Installation Provisions: Installation and Rearrangement

Installation of a seating system having any model number and part number identified in table 1 to paragraphs (c), (g), (i), (j), and (k) of this AD, other than those installed as direct spares, is considered a new installation that needs approval; except re-arrangement of the existing installed seating systems on an airplane is acceptable until the operator complies with the removal of affected seating systems required by paragraph (g) of this AD, provided the re-arrangement follows the same installation instructions and limitations as the original certification (*e.g.*, if the original limitations allowed 32″ to 34″ pitch, the new layout must be pitched within that range).

(k) Parts Installation Prohibition: Components of Seating Systems

As of the effective date of this AD, no person may install on any airplane any component of any seating system having any model number identified in table 1 to paragraphs (c), (g), (i), (j), and (k) of this AD that is approved under TSO–C127a; except as specified in paragraphs (k)(1), (k)(2), and (k)(3) of this AD.

(1) Components of seating systems specified in paragraph (g) of this AD may be removed from service and re-installed on airplanes operated by the same operator but only until the operator complies with the removal of affected seating systems required by paragraph (g) of this AD.

(2) New components of seating systems may be installed as direct spares for the same part number components but only until the operator complies with the removal of affected seating systems required by paragraph (g) of this AD.

(3) Components of seating systems specified in paragraph (g) of this AD that are installed as direct spares are subject to the applicable requirements and compliance times specified in paragraph (g) of this AD.

(l) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (m) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(m) Related Information

For more information about this AD, contact Patrick Farina, Aerospace Engineer, Cabin Safety Branch, ANM–150L, FAA, Los Angeles Aircraft Certification Office (ACO), 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5344; fax: 562–627–5210; email: *patrick.farina@faa.gov.*

Issued in Renton, Washington, on April 11, 2016.

Victor Wicklund,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–09004 Filed 4–19–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5594; Directorate Identifier 2014–NM–169–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Dassault Aviation Model FALCON 900EX and FALCON 2000EX airplanes. This proposed AD was prompted by a review that identified a nonconformity between the torque value applied to the screw-nuts of aileron servo actuators, and the torque value specified by the type design. This proposed AD would require replacing certain aileron servo actuators with serviceable servo actuators. We are proposing this AD to prevent desynchronization between two servo actuator barrels, which could lead to reduced control of the airplane during roll maneuvers at low altitude.

DATES: We must receive comments on this proposed AD by June 6, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://*

www.regulations.gov by searching for and locating Docket No. FAA–2016–5594; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone 800–647–5527) is in the ADDRESSES section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1139.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the ADDRESSES section. Include “Docket No. FAA–2016–5594; Directorate Identifier 2014–NM–169–AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0184, dated August 7, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or “the MCAI”), to correct an unsafe condition for all Dassault Aviation Model FALCON 900EX and FALCON 2000EX airplanes. The MCAI states:

> A quality review of recently delivered aeroplanes identified a non-conformity concerning the torque value applied to screw-nuts of aileron servo actuators, which was inconsistent with the value specified by the type design.
>
> The subsequent investigation demonstrated that the washer which is bent on nut and rod ensures the affected selector synchronisation between two servo actuator barrels for a minimum of 2,000 flight hours (FH). After this period, a possible de-synchronization of the affected selector assembly may occur.
>
> This condition, if not corrected, could lead to reduced control of the aeroplane during roll manoeuvers at low altitude.
>
> To address this potential unsafe condition, Dassault Aviation issued Service Bulletin (SB) F900EX–476 Revision 1 and SB F2000EX–350 to provide replacement instructions for the affected aileron servo actuators, as applicable to aeroplane type.
>
> For the reasons described above, this [EASA] AD requires replacement of affected aileron servo actuators with serviceable parts. This [EASA] AD also identifies that the affected aileron servo actuators can be re-qualified as serviceable parts only after a refurbishment accomplished by an approved maintenance organization.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5594.

Related Service Information Under 1 CFR Part 51

We reviewed Dassault Service Bulletins F900EX–476, Revision 1, dated June 25, 2014; and F2000EX–350, dated April 9, 2014. This service information describes procedures for removing the aileron servo actuator. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the ADDRESSES section.

FAA’s Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of these same type designs.

Costs of Compliance

We estimate that this proposed AD affects 284 airplanes of U.S. registry.

We also estimate that it would take about 14 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $43,460 per product. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $12,680,600, or $44,650 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. “Subtitle VII: Aviation Programs,” describes in more detail the scope of the Agency’s authority.

We are issuing this rulemaking under the authority described in “Subtitle VII, Part A, Subpart III, Section 44701: General requirements.” Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a “significant regulatory action” under Executive Order 12866;
2. Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Dassault Aviation: Docket No. FAA–2016–5594; Directorate Identifier 2014–NM–169–AD.

(a) Comments Due Date

We must receive comments by June 6, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Dassault Aviation Model FALCON 900EX and FALCON 2000EX airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Reason

This AD was prompted by a review that identified a nonconformity between the torque value applied to the screw-nuts of aileron servo actuators, and the torque value specified by the type design. We are issuing this AD to prevent desynchronization between two servo actuator barrels, which could lead to reduced control of the airplane during roll maneuvers at low altitude.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Replacement of Aileron Servo Actuator

At the later of the applicable time specified in paragraphs (g)(1) and (g)(2) of this AD: Replace each affected aileron servo actuator, as identified in figure 1 to paragraph (g) of this AD (for Model FALCON 900EX airplanes) or figure 2 to paragraph (g) of this AD (for Model FALCON 2000EX airplanes), with a serviceable part in accordance with the Accomplishment Instructions of Dassault Service Bulletin F900EX–476, Revision 1, dated June 25, 2014; or Dassault Service Bulletin F2000EX–350, dated April 9, 2014; except where Dassault Service Bulletin F900EX–476, Revision 1, dated June 25, 2014; or F2000EX–350, dated April 9, 2014; specify to "remove" the applicable aileron servo actuator, this AD requires replacement of the applicable aileron servo actuator. A serviceable part is one that is specified in the "New P/N" column in the table of paragraph 3., "Material Information," of Dassault Service Bulletin F900EX–476, Revision 1, dated June 25, 2014; or Dassault Service Bulletin F2000EX–350, dated April 9, 2014.

(1) For airplanes on which the aileron servo actuator was not replaced during maintenance: At the later of the times specified in paragraphs (g)(1)(i) and (g)(1)(ii) of this AD.

(i) Within 25 months or 1,640 flight hours, whichever occurs first, since the date of issuance of the original airworthiness certificate or date of issuance for the original export certificate of airworthiness.

(ii) Within 30 days after the effective date of this AD.

(2) For airplanes on which the aileron servo actuator was replaced during maintenance: At the later of the times specified in paragraphs (g)(2)(i) and (g)(2)(ii) of this AD.

(i) Within 1,640 flight hours after replacement of the aileron servo actuator during maintenance.

(ii) Within 30 days after the effective date of this AD.

Note 1 to paragraph (g) of this AD: The affected aileron servo actuators are known to be installed on the following airplanes: Prior to airplane delivery, on Model FALCON 900EX airplanes having serial number (S/N) 265 through 270 inclusive, S/N 272 and S/N 273, and on Model FALCON 2000EX airplanes having S/N 243, S/N 246 through 258 inclusive, S/N 260 through 263 inclusive, S/N 702 through 710 inclusive and S/N 714; and after airplane delivery, during a maintenance operation on Model FALCON 900EX airplane having S/N 177.

FIGURE 1 TO PARAGRAPH (g) OF THIS AD—AFFECTED ACTUATORS ON MODEL FALCON 900EX AIRPLANES

Model FALCON 900EX airplane having S/N—	With actuator part no. (P/N)—	And actuator S/N—
177	103117–06	5003
265	103117–06	5002
266	103117–05	5000
	103117–06	5007
267	103117–05	5001
268	103117–05	5004
269	103117–05	5005
	103117–06	5011
270	103117–06	5012
	103117–13	5017
272	103117–05	5010
	103117–14	5016
273	103117–13	5014
	103117–14	5020

FIGURE 2 TO PARAGRAPH (g) OF THIS AD—AFFECTED ACTUATORS ON MODEL FALCON 2000EX AIRPLANES

Model FALCON 2000EX airplane having S/N—	With actuator P/N—	And actuator S/N—
243	103151–08	5002
246	103151–07	5000
	103151–08	5003
247	103151–07	5001
	103151–08	5006
248	103151–07	5004
	103151–08	5007
249	103151–07	5005
	103151–08	5012
250	103151–07	5008
	103151–08	5013
251	103151–07	5009
	103151–08	5014
252	103151–07	5011
	103151–08	5016
253	103151–07	5010
	103151–08	5015
254	103151–08	5017
	103151–07	5018
255	103151–07	5019
	103151–08	5022
256	103151–07	5021
	103151–08	5023
257	103151–08	5024
	103151–07	5026
258	103151–07	5027
	103151–08	5033
260	103151–08	5032
	103151–07	5035
261	103151–08	5037
	103151–07	5041
262	103151–08	5039
	103151–07	5047
263	103151–08	5044
	103151–09	5064
702	103151–07	5029
703	103151–07	5034
	103151–08	5042
704	103151–08	5036
	103151–07	5040
705	103151–08	5038
	103151–07	5046
706	103151–08	5043
	103151–07	5048
707	103151–07	5054
	103151–08	5057
708	103151–08	5045
	103151–07	5050
709	103151–08	5074
710	103151–07	5051
	103151–08	5053
714	103151–09	5065
	103151–10	5067

(h) Parts Installation Limitation

As of the effective date of this AD, no aileron servo actuator having a P/N and S/N listed in figure 1 to paragraph (g) of this AD or figure 2 to paragraph (g) of this AD is allowed to be installed on any airplane, unless the mark "D1" is included on the actuator repair placard.

Note 2 to paragraph (h) of this AD: The mark "D1" on an aileron servo actuator repair placard indicates that the affected part has been refurbished by an approved maintenance organization and is qualified as a serviceable part.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, ANM–116, International Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1137; fax 425–227–1139.

Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Dassault Aviation's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0184, dated August 7, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5594.

(2) For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com*. You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on April 8, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016–09003 Filed 4–19–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2016–5423; Directorate Identifier 2016–NE–09–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Division Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Pratt & Whitney (PW) PW4164, PW4164–1D, PW4168, PW4168–1D, PW4168A, PW4168A–1D, and PW4170 turbofan engines. This proposed AD was prompted by several instances of fuel leaks on PW engines installed with the Talon IIB combustion chamber configuration. This proposed AD would require initial and repetitive inspections of the affected fuel nozzles and their replacement with parts eligible for installation. We are proposing this AD to prevent failure of the fuel nozzles, which could lead to engine fire and damage to the airplane.

DATES: We must receive comments on this proposed AD by June 20, 2016.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; phone: 860–565–8770; fax: 860–565–4503. You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2016–5423; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Besian Luga, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7750; fax: 781–238–7199; email: *besian.luga@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2016–5423; Directorate Identifier 2016–NE–09–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

PW reported nine occurrences of fuel leaks on PW engines with the Talon IIB combustion chamber configuration. The subsequent investigation of these fuel leaks determined that the leak occurs at the brazed joint interface on the fuel injector support (fuel nozzle) between the inlet fitting and the nozzle support pad. Cracks are the result of thermal mechanical fatigue due to high thermal gradients on engines equipped with the Talon IIB combustor. The cracking may be aggravated by a laser tack weld that holds the nozzle fitting in place during the braze process. This process change, which adds this laser weld, was introduced to fuel nozzle, part number 51J345, in December 2008.

Related Service Information Under 1 CFR Part 51

We reviewed PW Alert Service Bulletin (ASB) PW4G–100–A73–45, dated February 16, 2016. The ASB describes procedures for inspecting and replacing the fuel nozzles. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require initial and repetitive inspections and replacement of the affected fuel nozzles.

Costs of Compliance

We estimate that this proposed AD would affect 72 engines installed on airplanes of U.S. registry. We also estimate 2.2 hours per engine to comply with this proposed inspection and 48 hours to replace the fuel nozzle when it is replaced. The average labor rate is $85 per hour. We estimate that parts cost would be $15,780 per engine. Based on these figures, we estimate the cost of this proposed AD on U.S. operators to be $1,443,384.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

(1) Is not a "significant regulatory action" under Executive Order 12866,

(2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Pratt & Whitney: Docket No. FAA–2016–5423; Directorate Identifier 2016–NE–09–AD.

(a) Comments Due Date

We must receive comments by June 20, 2016.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Pratt & Whitney (PW):

(1) PW4164, PW4168, and PW4168A model engines that have incorporated PW Service Bulletin (SB) PW4G–100–72–214, dated December 15, 2011, or PW SB PW4G–100–72–219, Revision No. 1, dated October 5, 2011, or original issue, and have fuel nozzles, part number (P/N) 51J345, installed;

(2) PW4168A model engines with Talon IIA outer combustion chamber assembly, P/N 51J100, and fuel nozzles, P/N 51J345, with serial numbers CGGUA19703 through CGGUA19718 or CGGUA22996 and higher, installed;

(3) PW4168A–1D and PW4170 model engines with engine serial numbers P735001 thru P735190 and fuel nozzles, P/N 51J345, installed; and

(4) PW4164–1D, PW4168–1D, PW4168A–1D, and PW4170 model engines that have incorporated PW SB PW4G–100–72–220, Revision No. 4, dated September 30, 2011, or earlier revision, and have fuel nozzles, P/N 51J345, installed.

(d) Unsafe Condition

This AD was prompted by nine instances of fuel leaks on PW engines with the Talon IIB combustion chamber configuration installed. We are issuing this AD to prevent failure of the fuel nozzles, which could lead to engine fire and damage to the airplane.

(e) Compliance

Comply with this AD within the compliance times specified, unless already done.

(1) Within 800 flight hours after the effective date of this AD, and thereafter within every 800 flight hours accumulated on the fuel nozzles, do the following:

(i) Inspect all fuel nozzles, P/N 51J345. Use Part A of PW Alert Service Bulletin (ASB) PW4G–100–A73–45, dated February 16, 2016, to do the inspection.

(ii) For any fuel nozzle that fails the inspection, before further flight, remove and replace it with a part that is eligible for installation.

(2) At the next shop visit after the effective date of this AD, and thereafter at each engine shop visit, remove all fuel nozzles, P/N 51J345, unless fuel nozzles were replaced within the last 100 flight hours. Use Part B of PW ASB PW4G–100–A73–45, dated February 16, 2016, to replace the fuel nozzles with parts eligible for installation.

(f) Definitions

(1) For the purpose of this AD, an "engine shop visit" means the induction of an engine into the shop for any maintenance.

(2) For the purpose of this AD, a part that is "eligible for installation" is a fuel nozzle, with a P/N other than 51J345, that is FAA-approved for installation or a fuel nozzle, P/N 51J345, that meets the requirements of Part A, paragraph 4.B., or Part B, paragraph 1.B. of PW ASB PW4G–100–A73–45, dated February 16, 2016.

(g) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: *ANE-AD-AMOC@faa.gov.*

(h) Related Information

(1) For more information about this AD, contact Besian Luga, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA 01803; phone: 781–238–7750; fax: 781–238–7199; email: *besian.luga@faa.gov.*

(2) PW ASB PW4G–100–A73–45, dated February 16, 2016, can be obtained from PW using the contact information in paragraph (h)(3) of this proposed rule.

(3) For service information identified in this proposed rule, contact Pratt & Whitney, 400 Main St., East Hartford, CT 06108; phone: 860–565–8770; fax: 860–565–4503.

(4) You may view this service information at the FAA, Engine & Propeller Directorate, 1200 District Avenue, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on April 13, 2016.

Carlos Pestana,

Acting Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2016–09122 Filed 4–19–16; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 304

RIN 3084–AB34

Rules and Regulations Under the Hobby Protection Act

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking; request for public comments.

SUMMARY: As part of its regular review of all its rules and guides, and in response to Congressional amendments to the Hobby Protection Act ("Hobby Act" or "Act"), the Federal Trade Commission ("Commission") proposes to amend its Rules and Regulations Under the Hobby Protection Act ("Rules"), and seeks comment on its proposals.

DATES: Comments must be received on or before July 1, 2016.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write "Hobby Protection Rules Review" on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/hobbyprotectionrules* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex B), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex B), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Joshua S. Millard, (202) 326–2454, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave. NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

This Notice of Proposed Rulemaking ("NPRM") summarizes the Hobby Act, the Rules, and the recent amendments to the Hobby Act. It also summarizes the comments the Commission received in response to its 2014 request for comment and explains why the Commission proposes amendments. Additionally, it poses questions soliciting further comment. It asks, in particular, whether the proposed amendments appropriately implement Congressional changes to the Act, and what regulatory burden the proposed amendments may impose. Finally, the NPRM sets forth the Commission's regulatory analyses under the Regulatory Flexibility and Paperwork Reduction Acts, as well as the text of the proposed amendments.

II. Background

On November 29, 1973, President Nixon signed the Hobby Protection Act, 15 U.S.C. 2101–2106. The Hobby Act requires manufacturers and importers of "imitation political items"[1] to "plainly and permanently" mark them with the "calendar year" the items were manufactured. *Id.* 2101(a). The Hobby Act also requires manufacturers and importers of "imitation numismatic items"[2] to "plainly and permanently" mark these items with the word "copy." *Id.* 2101(b). The Hobby Act further directed the Commission to promulgate regulations for determining the "manner and form" that imitation political items and imitation numismatic items are to be permanently marked with the calendar year of manufacture or the word "copy." *Id.* 2101(c).

In 1975, the Commission issued Rules and Regulations Under the Hobby Protection Act, 16 CFR part 304.[3] The Rules track the definitions used in the Hobby Act and implement that Act's "plain and permanent" marking requirements by establishing where the item should be marked, the sizes and dimensions of the letters and numerals to be used, and how to mark incusable and nonincusable items.[4] In 1988, the Commission amended the Rules to provide additional guidance on the minimum size of letters for the word "copy" as a proportion of the diameter of coin reproductions.[5] 53 FR 38942 (Oct. 4, 1988).

The Commission reviewed the Rules in 2004. That review yielded many comments proposing that the Commission expand coverage to products beyond the scope of the Hobby Act and address problems involving the selling (or passing off) as originals of reproductions of antiques and other items not covered by the Act. However, the Commission retained the Rules without change, noting that it did not have authority under the Hobby Act to expand the Rules as requested. 69 FR 9943 (Mar. 3, 2004).

In 2014, the Commission again requested public comment on the Rules' costs, benefits, and overall impact.[6] That comment period closed on September 22, 2014.

On December 19, 2014, President Obama signed into law H.R. 2754, the Collectible Coin Protection Act ("CCPA"), a short set of amendments to the Hobby Act. The CCPA amends the Act's scope to address not only the distribution by manufacturers and importers of imitation numismatic items, but also "the sale in commerce" of such items. CCPA, Public Law 113–288, § 2(1)(A) (2014). Additionally, the CCPA makes it a violation of the Hobby Act "for a person to provide substantial assistance or support to any manufacturer, importer, or seller if that person knows or should have known that the manufacturer, importer, or seller is engaged in any act or practice" violating the marking requirements of the Act. Public Law 113–288, § 2(1)(B).[7]

III. Summary of Comments and Analysis

The Commission received six comments in response to its 2014 FRN.[8]

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[1] An imitation political item is "an item which purports to be, but in fact is not, an original political item, or which is a reproduction, copy, or counterfeit of an original political item." 15 U.S.C. 2106(2). The Hobby Act defines original political items as being any political button, poster, literature, sticker or any advertisement produced for use in any political cause. *Id.* 2106(1).

[2] An imitation numismatic item is "an item which purports to be, but in fact is not, an original numismatic item or which is a reproduction, copy, or counterfeit of an original numismatic item." 15 U.S.C. 2106(4). The Hobby Act defines original numismatic items to include coins, tokens, paper money, and commemorative medals which have been part of a coinage or issue used in exchange or used to commemorate a person or event. *Id.* § 2106(3).

[3] 40 FR 5459 (Feb. 6, 1975).

[4] Incusable items are items that can be impressed with a stamp.

[5] Before this amendment, if a coin were too small to comply with the minimum letter size requirements, the manufacturer or importer had to request a variance from those requirements from the Commission. Because imitation miniature coins were becoming more common, the Commission determined that it was in the public interest to allow the word "copy" to appear on miniature imitation coins in sizes that could be reduced proportionately with the size of the item.

[6] 79 FR 40691 (July 14, 2014).

[7] The CCPA also amends the Hobby Act to expand the permissible venue (*i.e.*, location) for private actions seeking injunctions or damages for violations of the Hobby Act. Previously, a proper venue was "any United States District Court for a district in which the defendant resides or has an agent." Proper venue now extends to any U.S. District Court for a district in which the defendant transacts business, or wherever venue is proper under 28 U.S.C. 1391. Public Law 113–288, § 2(2)(A)–(B). Further, the CCPA amends the Hobby Act to state that in cases of violations of the Act involving unauthorized use of a trademark of a collectible certification service, the owners of such trademarks also have rights provided under the Trademark Act of 1946, 15 U.S.C. 1116 *et seq.* Public Law 113–288, § 2(2)(C).

[8] The comments are available on the Commission's Web site at *http://www.ftc.gov/policy/public-comments/initiative-577.* By comparison, the Commission received 350 comments in its 2004 regulatory review of the

Continued

Members of the general public submitted four comments; a self-identified professional coin and paper money dealer offered a comment; and an attorney with asserted experience pertaining to coins and other collectibles submitted a comment in his personal capacity. As discussed below, commenters who addressed the issue agreed that the Commission should retain the Rules. Some suggested modifying the Rules to expand their scope or to clarify their applicability to certain kinds of collectible coins.

A. Support for the Rules

All of the commenters who addressed the issue supported the Rules; none advocated rescinding them. For example, one commenter stated, "there [is] a continuing need for the Rules as currently promulgated because . . . they do protect consumers."[9] Another described the Act as "a boon to collectors of legitimate numismatic and political items," and stated: "Over the years the presence of the law and supporting regulations has provided guidance for makers of replicas."[10] A dealer stated that the Act "is a brilliant effort to help protect the consumer from fraud, and . . . is well thought of across all [l]egitimate [d]ealers."[11]

B. Suggested Rules Modifications

Some commenters suggested modifications to the Rules. In particular, several commenters suggested modifications to address "fantasy coins," government-issued coins altered by non-governmental entities to bear historically impossible dates or other features marketed as novelties.[12] Commenters variously suggested that the Commission require manufacturers of fantasy coins to stamp such items with a "FANTASY" mark,[13] expressly permit the sale of such items without an identifying mark,[14] or ban such items altogether.[15] Several commenters also reported an increase in imports of unmarked replica coins from Asia, and urged that the Rules cover such sales.[16] One commenter specifically suggested expanding the Rules' scope to incorporate the provisions of the CCPA before Congress adopted it and sent it to the President for his signature.[17]

C. Analysis

In light of the record, the Commission concludes there is a continuing need for the Rules, and the costs they impose on businesses are reasonable. Commenters who addressed the subject supported the Rules, and no dealer or business expressed the view that the Rules should be rescinded or revised to reduce costs. Moreover, Congress' recent expansion of the Hobby Act's scope (addressing, among others, persons who substantially assist or support manufacturers, importers, or sellers that violate the Act's marking requirements) also appears to evince Congressional sentiment that the Rules have not imposed undue costs upon businesses or the public. Hence, both the record and recent Congressional action support retaining the Rules.

The Commission recognizes, however, that amendments to the Rules are necessary to bring them into harmony with the amended Hobby Act. The Commission proposes to align its Rules with the Hobby Act by: (1) Extending the Rules' scope to cover persons or entities engaged in "the sale in commerce" of imitation numismatic items; and (2) stating that persons or entities violate the Rules if they provide substantial assistance or support to any manufacturer, importer, or seller of imitation numismatic items, or any manufacturer or importer of imitation political items, when they know, or should have known, that such person is engaged in any act or practice violating the marking requirements set forth in the Hobby Act and the Rules. The Commission solicits comment on the proposed amendments and the regulatory burden they may impose on businesses.

However, the Commission does not propose amending its Rules to incorporate the CCPA's provisions regarding the proper location for lawsuits or the protection of the trademark rights of collectible certification services, summarized *supra* note 6, as the existing Rules do not address, relate to, or conflict with those provisions.

Additionally, it is not necessary to modify the Rules to address specific collectible items, such as "fantasy coins," as some commenters suggested. The Commission can address specific numismatic items as the need arises. Notably, the Commission has already addressed whether coins resembling government-issued coins with date variations are subject to the Rules. *In re Gold Bullion Int'l, Ltd.*, 92 F.T.C. 196 (1978). It concluded that such coins should be marked as a "COPY" because otherwise they could be mistaken for an original numismatic item. *See id.* at 223 ("[M]inor variations in dates between an original and its alleged 'copy' are insufficient to deprive the latter of its status as a 'reproduction, copy or counterfeit of an 'or[i]ginal numismatic item' and do not eliminate the requirement that the latter be marked with the word 'Copy'.").[18]

Lastly, the Commission does not propose modifying the Rules to ban the sale of fantasy coins outright. Sales of properly-marked fantasy coins are lawful under the Commission's decision in *In re Gold Bullion* discussed above, which held that vendors could sell coins with date variations so long as the coins are marked with the word 'Copy.' " 92 F.T.C. at 223. By contrast, the federal statute prohibiting the alteration of U.S. coins requires fraudulent intent. 18 U.S.C. 331. Accordingly, the Commission finds no grounds to adopt a rule banning fantasy coins.

IV. Proposed Amendments

As the CCPA's amendments appear to require conforming changes, the Commission proposes modifying the Rules' "Applicability" section, set forth at 16 CFR 304.3. The specific text of these proposed modifications is set forth at the end of this NPRM.

V. Request for Comment

The Commission solicits comment on the following specific questions:

(A) What costs or burdens would the proposed Rules amendments impose and on whom? How many retailers, manufacturers, and importers are subject to the Rules? The Commission in particular seeks information on any burden each amendment would impose on small businesses and entities. How many small entities are affected by the

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Rules, but the vast majority of those were form letters from individual collectors. 69 FR at 9943.

[9] Comment of Luke Burgess, *available at http://www.ftc.gov/policy/public-comments/2014/09/09/comment-00008*.

[10] Comment of Roger Burdette, *available at http://www.ftc.gov/policy/public-comments/2014/09/09/comment-00007; see also* Comment of Kenneth Tireman of NC Coppers, *available at http://www.ftc.gov/policy/public-comments/2014/07/30/comment-00004*.

[11] Comment of Kenneth Tireman, *supra*.

[12] *See* Comment of Luke Burgess, *supra* (offering example of Roosevelt dime altered to read "1945," noting that Roosevelt dime was not introduced until 1946, and noting that such coins are not intended to be used as currency).

[13] *See id.*

[14] *See* Comment of Daniel Carr, *available at http://www.ftc.gov/policy/public-comments/2014/09/17/comment-00010;* Comment of Armen Vartian, available at *http://www.ftc.gov/policy/public-comments/2014/09/19/comment-00011*.

[15] *See* Comment of Luke Burgess, *supra*.

[16] *See, e.g.*, Comments of Daniel Carr, Roger Burdette, *supra*.

[17] *See* Comment of Armen Vartian, *supra*.

[18] *See also* 92 F.T.C. at 217–18 (providing further guidance on scope of Act, defining Act's reference to "coinage or issue which has been used in exchange" to mean coins that have been "actively traded in the marketplace and used as a means of payment") (ellipsis omitted).

Rules, what are their annual revenues, and what is their size in terms of number of employees?

(B) What evidence supports your answers?

VI. Paperwork Reduction Act

The proposed amendments to the Rules do not constitute a "collection of information" under the Paperwork Reduction Act, 44 U.S.C. 3501–3521 ("PRA"). The amendments are proposed to incorporate changes made to the Hobby Act pursuant to the enactment of the CCPA after the Commission last requested public comment on the Rules. Prior to those changes, the Hobby Act already required manufacturers and importers of imitation political items and imitation numismatic items to mark such replica items (with the calendar year of manufacture or the word, "copy," respectively) so they may be identified as replicas. The disclosure requirement under the existing Rules and the proposed amendments are not a PRA "collection of information" for which "burden" is evaluated and estimated as they specify the wording for proper disclosure (here, the word "copy"). *See* 5 CFR 1320.3(c)(2) ("The public disclosure of language of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included within [the definition of a 'collection of information.']"). Moreover, extending this disclosure requirement to sellers of imitation numismatic items should not increase the burden of compliance to the extent they are selling items previously marked in compliance with the Hobby Act by manufacturers or importers. The amendments do not impose any new burden upon manufacturers and importers who produce replica items covered by the Hobby Act and Rules. Nor do the proposed amendments to the Rules impose any burden beyond that imposed by the enactment of the CCPA's changes to the Hobby Act.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires an agency to provide an Initial Regulatory Flexibility Analysis with a proposed rule unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603–605.

FTC staff estimates that approximately 5,000 retailers, manufacturers, and importers of imitation numismatic items are subject to the Rules.[19] FTC staff further estimates that there are fewer manufacturers and importers of imitation political items, from 500 to 2,500.[20] These are general estimates, and recognizing them as such, the Commission invites public input regarding how many retailers, manufacturers, and importers are subject to the Rules. Commission staff understands from a prominent political memorabilia membership organization, the American Political Items Collectors, that a disclosure that an item is an imitation is built into the manufacturing process. Entities compliant with the Rules mark replica coins with "COPY," and replica political items with the date of manufacture, when those items are made. The entities subject to these burdens will be classified as small businesses if they satisfy the Small Business Administration's relevant size standards, as determined by the Small Business Size Standards component of the North American Industry Classification System ("NAICS").[21] Potentially relevant NAICS size standards, which are either minimum annual receipts or number of employees, are as follows:

NAICS Industry title	Small business size standard
Sign Manufacturing	500 employees.
Fastener, Button, Needle and Pin Manufacturing	500 employees.
Miscellaneous Manufacturing	500 employees.
Miscellaneous Fabricated Metal Product Manufacturing	750 employees.
Rubber Product Manufacturing	500 employees.
Miscellaneous Wood Product Manufacturing	500 employees.
Leather Good and Allied Product Manufacturing	500 employees.
Commercial Printing	500 employees.
Miscellaneous Durable Goods Merchant Wholesalers	100 employees.
Book, Periodical, and Newspaper Merchant Wholesalers	100 employees.
Toy and Hobby Goods and Supplies Merchant Wholesalers	100 employees.
Hobby, Toy and Game Stores	$27.5 million.
Souvenir Stores	$7.5 million.
Political Organizations	$7.5 million.
Electronic Shopping	$32.5 million.
Electronic Auctions	$38.5 million.
Mail-Order Houses	$38.5 million.

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[19] This estimate rests on an industry publication's assessment of the general rare coin industry; comparable statistics are not as readily available regarding the size of the imitation numismatic item industry, which offers and sells replicas of rare and other coins. *See generally* Numismatic Guaranty Corp., "Coin Collecting: How Large is the Rare Coin Market?," Coin Week (Dec. 19, 2013), *http://www.coinweek.com/education/coin-collecting-large-rare-coin-market.*

[20] This estimate reflects FTC staff's assessment that the political memorabilia industry is comparatively smaller than that for coins, with fewer public membership or trade organizations.

[21] The standards are available at *http://www.sba.gov/sites/default/files/files/Size_Standards_Table.pdf.*

The Commission is unable to conclude how many of the above-listed entities qualify as small businesses. The record in this proceeding does not contain information regarding the size of the entities subject to the Rules. Moreover, the relevant NAICS categories include many entities that do not engage in activities covered by the Rules. Therefore, estimates of the percentage of small businesses in those categories would not necessarily reflect the percentage of small businesses subject to the Rules in those categories. Accordingly, the Commission invites comments regarding the number of entities in each NAICS category that are subject to the Rules, and revenue and employee data for those entities.

Even absent this data, however, the Commission does not expect that the proposed amendments will have a significant economic impact on small entities. As discussed above in Section VI, the amendments do not impose any new costs upon persons or entities engaged in commerce concerning items that comply with the marking requirements of the Hobby Act and Rules. This document serves as notice to the Small Business Administration of the agency's certification of no effect. Nonetheless, to ensure that the economic impact of the proposed amendments on small entities is fully addressed, Commission staff have prepared the following initial regulatory flexibility analysis.

(1) *A description of the reasons why action by the agency is being considered.*

As explained above, the proposed amendment is intended to harmonize the Rules with the Hobby Act, as amended by the CCPA.

(2) *A succinct statement of the objectives of, and legal basis for, the proposed rule.*

See above. The proposed amendment, to 16 CFR 304.3, would extend the Rules' coverage to persons engaged in the sale in commerce of imitation numismatic items, and persons or entities that provide substantial assistance or support to any manufacturer, importer, or seller of covered items under certain circumstances. The legal basis for this amendment is the CCPA, which expanded the scope of the Hobby Act.

(3) *A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.*

As noted earlier, staff estimates that approximately 5,000 retailers, manufacturers, and importers of imitation numismatic items are subject to the Rules, and from 500 to 2,500 manufacturers and importers of imitation political items are subject to the Rules. Commission staff seek further comments and data on this general estimate.

(4) *A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.*

The Rules impose a disclosure (marking) burden, currently estimated at 5 hours annually. The proposed amendment is not expected to increase this burden on any person or entity subject to and in compliance with the Rules. The additional burden imposed by the proposed amendment, if it is adopted, will result solely from the expanded scope of the Rules to cover certain additional persons and entities, consistent with Hobby Act, as amended. As noted earlier, the disclosure burden imposed by the Rules is normally addressed in the manufacturing process, which requires graphic or other design skills for the die, cast, mold or other process used to manufacture the item. Commission staff invite further comment, if any, on these issues.

(5) *An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.*

Although the Hobby Act expressly does not preempt other Federal or state law, *see* 15 U.S.C. 2105, Commission staff is not aware of any other relevant Federal rules that duplicate, overlap, or conflict with the Rules or the proposed amendments to the Rules. *See* 16 CFR 340.4 (noting that the Rules do not substitute for or limit other statutes and laws that, *inter alia,* prohibit the reproduction of genuine currency, *i.e.,* counterfeiting). Commission staff invite further comment or information, if any, on this issue.

(6) *Any significant alternatives to the proposed rule, to the extent they would accomplish the stated objectives of applicable statutes and minimize any significant economic impact of the proposed rule on small entities, such as different compliance or reporting requirements or timetables for small entities, clarification, consolidation, or simplification of such requirements, or the use of performance rather than design standards, or a small entity exemption.*

Commission staff have not identified any significant alternatives that would accomplish the statute's objectives while minimizing any significant economic impact on small entities. The proposed amendment, as explained earlier, is intended to bring the scope of the Rules in line with the scope of the Hobby Act, as amended by the CCPA. Neither the Act nor the Rules exempt small entities, or impose lesser or different requirements on such entities. Such exemptions or alternative requirements would undermine the purpose and effect of the Act and the Rules, to the extent that Congress has determined by law that covered items, regardless of the size of the entity that manufactures, imports or sells them, require markings (*i.e.,* disclosures) under certain circumstances for the protection of consumers who may purchase such items. Commission staff seek public comment on whether the proposed amendment is sufficiently clear, simple, and concise to communicate the expanded scope of and potential liability under the Rules for covered persons and entities, including the consistency of the proposed amendment with the Hobby Act, as amended by the CCPA.

VIII. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record. *See* 16 CFR 1.26(b)(5).

IX. Instructions for Submitting Comments

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before July 1, 2016. Write "Hobby Protection Rules Review" on the comment. Your comment, including your name and your state, will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site. Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information.

In addition, do not include any "[t]rade secret or any commercial or financial information which is . . . privileged or confidential," as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you must follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comments to be withheld from the public record. Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comment online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/hobbyprotectionrules*, by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home*, you also may file a comment through that Web site.

If you file your comment on paper, write "Hobby Protection Rules Review" on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex B), Washington, DC 20580. If possible, submit your paper comment to the Commission by courier, or overnight service. If you prefer to deliver your comment, deliver it to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex B), Washington, DC 20024.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all responsive public comments that it receives on or before July 1, 2016. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see *http://www.ftc.gov/ftc/privacy.htm*.

X. Proposed Rule Language

List of Subjects in 16 CFR 304

Hobbies, Labeling, Trade practices.

For the reasons set forth in the preamble, the Federal Trade Commission proposes to amend 16 CFR part 304 as follows:

PART 304—RULES AND REGULATIONS UNDER THE HOBBY PROTECTION ACT

■ 1. The authority citation for this part continues to read as follows:

Authority: 15 U.S.C. 2101 *et seq.*

■ 2. Amend § 304.3 to read as follows:

§ 304.3 Applicability.

Any person engaged in the manufacturing, or importation into the United States for introduction into or distribution in commerce, of imitation political or imitation numismatic items shall be subject to the requirements of the Act and the regulations promulgated thereunder. Any person engaged in the sale in commerce of imitation numismatic items shall be subject to the requirements of the Act and the regulations promulgated thereunder. It shall be a violation of the Act and the regulations promulgated thereunder for a person to provide substantial assistance or support to any manufacturer, importer, or seller of imitation numismatic items, or to any manufacturer or importer of imitation political items, if that person knows or should have known that the manufacturer, importer, or seller is engaged in any practice that violates the Act and the regulations promulgated thereunder.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2016–09103 Filed 4–19–16; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2016–0276]

RIN 1625–AA08

Special Local Regulation; Lake of the Ozarks, Lakeside, MO

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a special local regulation for certain waters of the Lake of the Ozarks. This action is necessary to provide for the safety of life on these navigable waters near Lakeside, MO, during a powerboat race on June 4, 2016. This proposed rulemaking would designate prohibited areas for the race course and associated safety buffer, spectator areas, and location for vessels to transit during the race at no wake speeds. Deviation from the established special local regulation must be authorized by the Captain of the Port Upper Mississippi River or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before May 5, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0276 using the Federal eRulemaking Portal at *http://www.regulations.gov*. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LCDR Sean Peterson, Chief of Prevention, U.S. Coast Guard; telephone 314–269–2332, email *Sean.M.Peterson@uscg.mil*.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

On March 16, 2016, the Lake Race Steering Committee notified the Coast Guard that it will be hosting a powerboat race from 9 a.m. until 6 p.m. on June 4, 2016. This is the third year for this event and the sponsor has indicated the intent to host this event annually. The Coast Guard will work with the sponsor for future occurrences and may propose to add this event and special local regulation to the list of permanently recurring events for future years to eliminate the need for a separate rulemaking each year. For this year, on June 4, several heats are planned to occur throughout the day in the four-mile race course located on the Lake of the Ozarks Osage Branch. Hazards from the powerboat race include capsizing of participating vessels and loss of control of participating vessels. The Captain of the Port (COTP) Upper Mississippi River has determined that potential hazards associated with the powerboat race would be a safety concern.

The purpose of this rulemaking is to ensure the safety of life on the navigable waters immediately prior to, during, and immediately after the powerboat race. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1233.

III. Discussion of Proposed Rule

The COTP proposes to establish a special local regulation from 9 a.m. until 6 p.m. on June 4, 2016, designating the race course and location of spectator areas. Vessels transiting near the course would be restricted to transiting at the slowest safe speed. This special local regulation would cover navigable waters on the Lake of the Ozarks Osage Branch between miles 0 and 4. The Coast Guard has also posted a map depicting the location and restricted areas for this special local regulation in the docket. Six anchorage areas for spectators will be designated and are also shown on the map and labeled as A through F. This map may be viewed as indicated under the **ADDRESSESS** section. The duration of the regulation is intended to ensure the safety of vessels and these navigable waters before, during, and after the power boat race, scheduled from 9 a.m. to 6 p.m. No vessel or person would be permitted to deviate from the special local regulation without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, and duration of the special local regulation. Vessel traffic would be able to safely transit around the race course and spectators will have designated locations to view the race. Moreover, the Coast Guard would include event information in the Local Notice to Mariners, and the rule would allow vessels to seek permission to deviate from the regulation.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A. above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a special local regulation designating the race course, location of spectator area, and location for vessels to transit during the race at slowest safe speed. Normally such actions are categorically excluded from further review under paragraph 34(h) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov*. If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.T08–0276 to read as follows:

§ 100.T08–0276 Special Local Regulation; Lake of the Ozarks; Lakeside, MO.

(a) *Location.* The following areas are regulated areas: (1) Lake of the Ozarks Osage Branch between miles 0 and 4; the Bagnell Dam and Birdsong Hollow Cove, covering the entire width of the branch. Access to the race course and associated safety buffer area will be prohibited to authorized vessels only. The safety buffer area for the course will be marked with blue buoy markers. Vessels transiting outside of the safety buffer area shall proceed at no wake speed. See attached map for additional information on location.

(2) Six designated areas will be available for spectators for the duration of the races. The designated anchorage areas will be marked with blue and yellow buoy marker. They are labeled A–F on the attached map. The anchorage areas are located a minimum of 100 feet outside the race course safety buffer area marked with blue buoy markers. The six anchorages are located in the following areas: Branch Rd Point; Emerald Ln Point; Lotell Hollow Cove; McCoy Branch Cove; west of Duck Head Point; and Jennings Branch Cove. In addition to the listed designated anchorages, vessels may also anchor inside the protective coves.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Upper Mississippi River in the enforcement of the regulation.

(c) *Regulations.* (1) Under the general regulations in § 100.35 of this part, deviation from the regulations described in paragraph (a) of this section is prohibited unless authorized by the COTP Upper Mississippi River or designated representative.

(2) To seek permission to deviate from the regulation, contact the COTP or the COTP's designated representative via VHF–FM ch 16 or by calling Sector Upper Mississippi River at 314–269–2332.

(d) *Enforcement period.* This section will be enforced from 9 a.m. to 6 p.m. on June 4, 2016.

Dated: April 14, 2016.

M.L. Malloy,

Captain, U.S. Coast Guard, Captain of the Port Sector Upper Mississippi River.

[FR Doc. 2016–09096 Filed 4–19–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG–2014–0142]

RIN 1625–AA01

Anchorage Regulations; Special Anchorage Areas, Marina del Rey Harbor, California

AGENCY: Coast Guard, DHS.

ACTION: Notice of public meeting; request for comments and change in comment period.

SUMMARY: The Coast Guard announces a public meeting to receive comments on a supplemental notice of proposed rulemaking (NPRM) to revise the special anchorage in Marina del Rey Harbor, California. Based on the comments received in response to the NPRM that was published in the **Federal Register** on May 28, 2014, we published a supplemental NPRM proposing to amend the shape and reduce the size of the special anchorage in Marina del Rey Harbor, California. Additionally, we

propose to clarify the language in the note section of the existing regulation.

DATES: A public meeting will be held on Tuesday, April 12, 2016, from 6 to 7:30 p.m. to provide an opportunity for oral comments. Written comments and related material may also be submitted to Coast Guard personnel specified at that meeting. The comment period for the supplemental notice of proposed rulemaking will close April 30, 2016. All comments and related material must be received by the Coast Guard on or before April 30, 2016.

ADDRESSES: The public meeting will be held at Burton W. Chace Park Community Room, 13650 Midanao Way, Marina del Rey, CA 90292, telephone 310–305–9595.

You may submit written comments identified by docket number USCG–2014–0142 using the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions concerning the meeting or the proposed rule, please call or email Lieutenant Junior Grade Colleen Patton Waterways Management Branch, Eleventh Coast Guard District, telephone 510–437–5984, email *Colleen.M.Patton@uscg.mil.*

SUPPLEMENTARY INFORMATION:

Background and Purpose

We published a notice of proposed rulemaking (NPRM) in the **Federal Register** on May 28, 2014 (79 FR 30509), entitled "Anchorage Regulations: Subpart A—Special Anchorage Areas, Marina del Rey Harbor, California." That NPRM proposed to disestablish the special anchorage area. In response to comments received, we published a supplemental NPRM (81 FR 10156, February 29, 2016) to retain the special anchorage, but amend the shape and reduce the size of the anchorage to remove the anchorage area from a location where it could endanger vessel traffic. We have concluded that a public meeting would aid this rulemaking. Therefore, we are publishing this document announcing a public meeting and changing the end of the comment period from April 14, 2016, to April 30, 2016.

You may view the supplemental NPRM in our online docket, in addition to supporting documents prepared by the Coast Guard and comments submitted thus far by going to *http://www.regulations.gov.* Once there, insert "USCG–2014–0142" in the "Keyword" box and click "Search."

We encourage you to participate in this rulemaking by submitting comments either orally at the meeting or in writing. If you bring written comments to the meeting, you may submit them to Coast Guard personnel specified at the meeting to receive written comments. These comments will be submitted to our online public docket. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Comments submitted after the meeting must reach the Coast Guard on or before April 30, 2016. We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Information on Service for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact Lieutenant Junior Grade Colleen Patton at the telephone number or email address indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Public Meeting

The Coast Guard will hold a public meeting regarding its "Anchorage Regulations: Subpart A—Special Anchorage Areas, Marina del Rey Harbor, California" proposed rule on Tuesday, April 12, 2016 from 6 p.m. to 7:30 p.m., at Burton W. Chace Park Community Room, 13650 Mindanao Way, Marina del Rey, CA 90292, telephone 310–305–9595. Public parking lots are available on a pay basis. For Public transit information to the Community Room, contact the Los Angeles County Metropolitan Transportation Authority (Metro) at 323–466–3876 or search at *http://www.metro.net* for additional information. We will provide a written summary of the meeting and additional comments received at the meeting in the docket. The meeting may conclude before the allotted time if all who have come to submit oral comments have done so before 7:30 p.m.

Dated: March 24, 2016.

J.A. Servidio,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 2016–09171 Filed 4–19–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2016–0242]

RIN 1625–AA00

Safety Zone; Upper Mississippi River, Minneapolis, MN

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone on the Upper Mississippi River between miles 853.2 and 854.2. This action is necessary to provide for the safety of life on these navigable waters near Minneapolis, MN, during a fireworks display on July 23, 2016. This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Upper Mississippi River or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before May 20, 2016.

ADDRESSES: You may submit comments identified by docket number USCG–2016–0242 using the Federal eRulemaking Portal at *http://www.regulations.gov.* See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email LCDR Sean Peterson, Chief of Prevention, U.S. Coast Guard; telephone 314–269–2332, email *Sean.M.Peterson@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
UMR	Upper Mississippi River

U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On March 18, 2016, Marketing Minneapolis notified the Coast Guard that they will be conducting a fireworks display from 9:30 p.m. until 11 p.m. on July 23, 2016, for the official civic celebration of the City of Minneapolis. The sponsor has indicated the intent to host this event and related fireworks display annually. The Coast Guard will work with the sponsor for future occurrences and may propose to add this safety zone to the list of permanently recurring safety zones for future years to eliminate the need for a separate rulemaking each year. For this year, on July 23, the fireworks are to be launch from the Third Avenue Highway Bridge over the Mississippi River. Hazards from fireworks displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The Captain of the Port Upper Mississippi River (COTP) has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone between miles 853.2 and 854.2 as the fireworks being shot from the southern side of the Third Avenue Highway Bridge toward the south. The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters between miles 853.2 and 854.2 before, during, and after the scheduled event. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1231.

III. Discussion of Proposed Rule

The COTP proposes to establish a safety zone from 9:30 p.m. to 11 p.m. on July 23, 2016. The safety zone would cover all navigable waters between miles 853.2 and 854.2 on the Upper Mississippi River in Minneapolis, MN. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 10 p.m. to 10:30 p.m. fireworks display. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. During the evening vessel traffic is normally low in this area. Moreover, the Coast Guard would issue a Safety Marine Information Broadcast via VHF–FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A. above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction

M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting less than 2 hours that would prohibit entry within one mile of the fireworks display. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2–1 of Commandant Instruction M16475.lD. A preliminary environmental analysis checklist and Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov*. If your material cannot be submitted using *http://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at *http://www.regulations.gov* and can be viewed by following that Web site's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0242 to read as follows:

§ 165.08–0242 Safety Zone; Upper Mississippi River between miles 853.2 and 854.2; Minneapolis, MN.

(a) *Location.* The following area is a safety zone: All waters of the Upper Mississippi River between miles 853.2 and 854.2, from surface to bottom, Minneapolis, MN.

(b) *Definitions.* As used in this section, *designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Upper Mississippi River (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative via VHF–FM channel 16, or through Coast Guard Sector Upper Mississippi River at 314–269–2332. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement periods.* This section will be enforced from 9:30 p.m. to 11 p.m. on July 23, 2016.

(e) *Informational Broadcasts.* The COTP or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the dates and times of enforcement.

Dated: April 14, 2016.

M.L. Malloy,

Captain, U.S. Coast Guard, Captain of the Port Sector Upper Mississippi.

[FR Doc. 2016–09097 Filed 4–19–16; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AP48

Extra-Schedular Evaluations for Individual Disabilities

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to amend its adjudication regulation pertaining to extra-schedular consideration of a service-connected disability in exceptional compensation cases. In a recent decision, the United States Court of Appeals for the Federal Circuit (Federal Circuit) held that VA's regulation, as written, requires VA to consider the combined effect of two or more service-connected disabilities when determining whether to refer a disability evaluation for extra-schedular consideration. VA, however, has long interpreted its regulation to provide an extra-schedular evaluation for a single disability, not the combined effect of two or more disabilities. This proposed amendment will clarify VA's regulation pertaining to exceptional compensation claims such that an extra-schedular evaluation is available only for an individual service-connected disability but not for the combined effect of more than one service-connected disability.

DATES: Comments must be received on or before June 20, 2016.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to "RIN 2900–

AP48—Extra-schedular evaluations for individual disabilities.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment (This is not a toll-free number). In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Stephanie Li, Chief, Regulations Staff (211D), Compensation Service, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–9700 (This is not a toll-free telephone number).

SUPPLEMENTARY INFORMATION: The United State Court of Appeals noted in *Menegassi* v. *Shinseki* that Congress has given VA the authority to interpret its own regulations under its general rulemaking authority, citing 38 U.S.C. 501. 638 F.3d 1379, 1382 (Fed. Cir. 2011). Currently, 38 CFR 3.321(b)(1) provides that, “[t]o accord justice . . . to the exceptional case where the schedular evaluations are found to be inadequate,” the Under Secretary for Benefits (USB) or the Director of the Compensation and Pension Service is authorized “to approve . . . an extra-schedular evaluation commensurate with the average earning capacity impairment due exclusively to the service-connected disability or disabilities. The governing norm in these exceptional cases is: A finding that the case presents such an exceptional or unusual disability picture with such related factors as marked interference with employment or frequent periods of hospitalization as to render impractical the application of the regular schedular standards.”

In *Johnson* v. *McDonald,* the Court explained that the plain language of § 3.321(b)(1) using the plural forms of the “schedular evaluations” and “disabilities” is unambiguous and requires that VA consider the need for extra-schedular review by evaluating the collective impact of two or more service-connected disabilities, in addition to evaluating the effect of a single service-connected disability. 762 F.3d 1362, 1365–66 (Fed. Cir. 2014)., that *Id.* at 1365–66.

The history of 38 CFR 3.321(b)(1) reveals that Federal Circuit's interpretation does not accurately reflect VA's intent in issuing the regulation. Since 1936, VA has interpreted § 3.321(b)(1) to provide for an extra-schedular evaluation for each service-connected disability for which the schedular rating is inadequate based upon the regulatory criteria. Section 3.321(b)(1) was originally promulgated as R & PR 1307, instructing that correspondence from a field office to the Director of the Compensation Service alleging that the rating schedule provides inadequate or excessive ratings in an individual case will contain a statement of facts indicating as clearly as possible the extent to which the reduction in actual earnings is due to the service-connected disability and the extent to which this reduction would probably affect the average worker, in occupations similar to the claimant's preenlistment occupation, suffering a similar disability. R & PR 1307(B) and (C)(1930).

In 1936, R & PR 1307 was recodified as R & PR 1142, requiring a submitting agency to provide a recommendation concerning service connection and evaluation of every disability, under the applicable schedules as interpreted by the submitting agency. Then in 1954, this sentence was deleted from the regulation but later incorporated in the Department of Veterans Benefits Administration (VBA) Manual 8–5 Revised, para. 47.j. (Jan. 6, 1958). Thus, for 28 years following promulgating R & PR 1307(B) and (C), the VA predecessor regulations to § 3.321(b)(1) and the Manual provided for an extra-schedular evaluation based upon the effects of a single “disability,” not “disabilities”.

In 1961, VA recodified R & PR 1307(B) and (C) as 38 CFR 3.321(b)(1) and added a sentence authorizing an extra-schedular evaluation commensurate with the average earning capacity impairment due exclusively to the service-connected disability or disabilities. The VBA Manual provision regarding extra-schedular evaluations remained virtually the same from 1992 through June 30, 2015, when it was revised to implement *Johnson.* In 1992, the Manual was revised by adding the word “individual” before the word “disability(ies)” in paragraph 3.09, Submission For Extra-Schedular Consideration. M21–1, Part VI, para. 3.09 (Mar. 17, 1992). As amended, paragraph 3.09 required preparation of a memorandum to be submitted to Central Office whenever the schedular evaluations are considered to be inadequate for an individual disability(ies).

VBA Manual M21–1, Part III, Subpart iv, chpt. 6, § B, para. 4 (Aug. 3, 2011), stated in pertinent part:

> a. Extra-Schedular Evaluations in Compensation Claims
>
> Consider the issue of entitlement to an extra-schedular evaluation in compensation claims under
>
> - 38 CFR 3.321(b)(1) only where
>
> * * * * *
>
> — there is evidence of exception or unusual circumstances indicating that the rating schedule may be inadequate to compensate for the average impairment of earning capacity due to disability (for example, marked interference with employment or frequent periods of hospitalization)
>
> * * * * *
>
> c. Submitting Compensation Claims for Extra-Schedular Consideration
>
> Submit compensation claims to C&P Service for extra-schedular consideration under 38 CFR 3.321(b)(1) or 38 CFR 4.16(b) if
>
> - the schedular evaluations are considered to be inadequate for an individual disability
>
> * * * * *

See Thun v. *Shinseki,* 572 F.3d 1366, 1369 (Fed. Cir. 2009) (referring to this Manual provision as VA's interpretation of 38 CFR 3.321(b)(1)), *aff'd* 22 Vet. App. 111 (2008). Thus, VA's interpretation of section 3.321(b)(1) as manifested by the VBA Manual was consistent for 22 years, until the *Johnson* decision.

In addition, a 1996 General Counsel precedent opinion regarding the applicability of the regulation reads that “[s]ection 3.321(b)(1) applies when the rating schedule is inadequate to compensate for the average impairment of earning capacity from a particular disability.” VAOPGCPREC 6–96, para. 7, Add. 7. The opinion instructs that “when a claimant submits evidence that his or her service-connected disability affects employability in ways not contemplated by the rating schedule, the Board should consider the applicability of section 3.321(b)(1).” *Id.*

In 2013, VA published a proposed revision to 38 CFR 3.321(b)(1) as part of its Regulation Rewrite Project. 78 FR 71042, 71217 (Nov. 27, 2013). Consistent with VA's long-standing interpretation, that revision proposes to clarify that extra-schedular evaluations may be assigned for a specific service-connected disability, as distinguished from the combined effects of multiple disabilities. *Id.* However, that proposed rule was published before the *Johnson* decision. We are therefore proposing a version of § 3.321(b)(1) in this rulemaking that differs from the 2013 proposed rule in order to respond specifically to the Federal Circuit's analysis of the plain language of the current regulation. VA proposes to amend § 3.321(b)(1) to clarify that

§ 3.321(b)(1) provides an extra-schedular evaluation for an individual service-connected disability that is so exceptional or unusual due to factors such as marked interference with employment or frequent periods of hospitalization as to render evaluation under the rating schedule impractical.

VA proposes to retain the first sentence of current § 3.321(b)(1), which states that ratings will be based on the average impairments of earning capacity and that the Secretary shall periodically readjust the rating schedule, because it explains the limited scope of section 3.321(b)(1). Pursuant to 38 U.S.C. 1155, VA is authorized to "adopt and apply a schedule of rating of reductions in earning capacity from specific injuries or combination of injuries. The ratings shall be based, as far as practicable, upon the average impairments of earning capacity in civil occupations," rather than consideration of a veteran's actual wages or income. Based upon section 1155, the United States Court of Appeals for Veterans Claims (Veterans Court) rejected the argument that an inadequacy in the rating schedule for purposes of 38 CFR 3.321(b)(1) can be established solely by showing an asserted gap between a veteran's income and the income of similarly qualified workers in the same field. *Thun* v. *Peake,* 22 Vet. App. 111, 116 (2008). The Veterans Court explained that extra-schedular consideration cannot be used to undo the approximate nature that results from the rating system based on average impairment of earning capacity authorized by Congress. *Id.* Consistent with section 1155 and *Thun,* VA's proposed rule is not intended to authorize personalized ratings as a routine matter but only to provide for limited discretion in cases where the schedule is inadequate to compensate for average impairment of earning capacity.

VA proposes to revise the second sentence of 38 CFR 3.321(b)(1) to specify that extra-schedular consideration is available if "the schedular evaluation is inadequate to rate a single service-connected disability." We have added this language to explain that section 3.321(b)(1) would apply only to a single disability rather than upon consideration of multiple service-connected disabilities as the Federal Circuit held in *Johnson.* We have also deleted the phrase "or disabilities" at the end of the second sentence for the same purpose. VA also proposes to revise the last sentence of the regulation to clarify that the governing norm is a finding that "application of the regular schedular standards is impractical because the referred disability is so exceptional or unusual due to such related factors as marked interference with employment or frequent periods of hospitalization."

Other parts of the current § 3.321(b)(1) have been rewritten for clarity, including the heading of § 3.321(b), but the concepts remain unchanged. VA proposes to delete the reference to the Under Secretary for Benefits (USB) in current § 3.321(b)(1). Although the regulation has long allowed for referral for USB extra-schedular consideration, in practice VA service centers refer these claims to the Director of the Compensation Service. This revision brings authority in line with actual practice. The Director of the Compensation Service may delegate to other Compensation Service personnel the authority to approve extra-schedular ratings and, currently, such authority has been given to certain personnel in the Policy Staff of the Compensation Service. This is consistent with the established principle that VBA personnel are authorized to carry out such functions as may be assigned to them for purposes of administering VA benefits. *See* 38 CFR 2.6(b)(1), 3.100(a).

VA's proposed rule is logical and consistent with the regulatory scheme for evaluating disabilities. Individual disabilities are evaluated under criteria in VA's rating schedule describing the effects of specific diseases and injuries. *See* 38 CFR 4.71–4.150. The ratings assigned for individual conditions are combined into a single "combined evaluation" under a uniform formula set forth in a table. 38 CFR 3.323(a), 4.25. There is plainly a difference between the application of the diverse schedular criteria relating to specific conditions, and the application of a uniform formula for combining individual disability ratings. VA's proposed revision to § 3.321(b)(1), clarifying that that the regulation pertains to a single disability, is consistent with this distinction.

With respect to evaluation of individual conditions, the rating schedule criteria identify the predominant disabling features of the condition. For example, if VA determines that the condition produces significant disabling effects that are not contemplated by the rating-schedule criteria for that condition, VA may find that the rating-schedule criteria are inadequate in that case. In contrast, no criteria in the rating schedule provide for determining the "adequacy" of an overall combined evaluation that derives from several disabilities and their associated symptoms.

When VA assigns disability ratings for two or more individual disabilities, those ratings are combined by applying a standard formula provided in 38 CFR 4.25. There are no provisions in the rating schedule describing impairments that would be associated with a particular combination of disabilities determined by using this formula. Accordingly, there are no applicable standards to determine whether the combined rating is adequate to compensate for the combined effects of those disabilities. Indeed, in view of the vast number of potential combinations of disabilities that could arise, it is not feasible to formulate standards. In the absence of any applicable objective standards for evaluating the "adequacy" of an overall combined rating for multiple disabilities, requiring adjudicators to consider the adequacy of combined ratings would lead to inconsistent and highly subjective determinations. Accordingly, consistent with our long-standing interpretation, VA has determined that consideration of extra-schedular ratings is most logically done only at the level of individual disabilities. Any extra-schedular ratings assigned for individual disabilities may then be combined under the standard formula for combining ratings. The proposed language for section 3.321(b)(1) requiring consideration of the adequacy of the schedular evaluations in VA's rating schedule is consistent with the evaluation of individual conditions.

In addition, statutes and VA's implementing regulations provide additional compensation for the combined effect of more than one service-connected disability. Under 38 U.S.C. 1114(k)–(s), a veteran is entitled to special monthly compensation, in addition to the compensation payable under the VA rating schedule, for certain combinations of disabilities, *e.g.,* anatomical loss or loss of use of both buttocks, both feet, or one hand and one foot, deafness in both ears or blindness in both eyes. *See* 38 CFR 3.350. In addition, 38 U.S.C. 1160(a) provides that if a veteran has suffered loss of certain paired organs or extremities as a result of service-connected disabilities and non-service-connected disabilities, VA must assign and pay the veteran the applicable rate of compensation as if the combination of disabilities were the result of service-connected disability. *See* 38 CFR 3.383. Accordingly, in cases where Congress or VA has determined that special rating consideration is warranted based on the combined effects of multiple disabilities, they have expressly specified the manner of considering these combined effects.

Finally, VA regulations authorize a rating of total disability based on individual unemployability for veterans whose disabilities meet certain criteria. Under 38 CFR 4.16(a), an adjudicator may assign a total disability evaluation based upon individual unemployability rating for compensation purposes, without referral to any other official, if, in cases of multiple service-connected disabilities, a veteran has one service-connected disability rated at least 40-percent disabling and a combined rating of at least 70 percent and is unable to secure or follow a substantially gainful occupation as the result of such disability or disabilities. Under 38 CFR 4.16(b), if a veteran's service-connected disabilities do not meet the percentage requirements of section 4.16(a), but the veteran is unable to secure and follow a substantially gainful occupation by reason of such service-connected disability, the rating board must submit the case to the Director of the Compensation Service for consideration of entitlement to a total disability based on individual unemployability rating. VA has thus prescribed a uniform standard for considering whether the combined effects of multiple disabilities produce total impairment of earning capacity. However, in instances where the inability to secure and follow a substantially gainful occupation is not shown, VA believes that, to ensure fair and consistent application of rating standards, consideration of extra-schedular ratings should be conducted with respect to individual disabilities rather than the combined effects of multiple disabilities.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a "significant regulatory action," requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as "any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order."

The economic, interagency, budgetary, legal, and policy implications of this proposed rule have been examined, and it has been determined not to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov*, usually within 48 hours after the rulemaking document is published. Additionally, a copy of this rulemaking and its impact analysis are available on VA's Web site at *http://www.va.gov/orpm/*, by following the link for "VA Regulations Published From FY 2004 Through Fiscal Year to Date."

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This proposed rule would directly affect only individuals and will not directly affect small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This proposed rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number and title for the program affected by this document is 64.109, Veterans Compensation for Service-Connected Disability.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert D. Snyder, Chief of Staff, approved this document on April 11, 2016, for publication.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Veterans.

Dated: April 13, 2016.

Jeffrey Martin,

Office of Regulation Policy & Management, Office of the General Counsel, Department of Veterans Affairs.

For the reasons set out in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 3 as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Amend § 3.321 by revising the heading of paragraph (b)., revising paragraph (b)(1), and adding an authority citation at the end of paragraph (b).

The revisions and additions read as follows:

§ 3.321 General rating considerations.

* * * * *

(b) *Extra-schedular ratings in unusual cases.* (1) *Disability compensation.* Ratings shall be based, as far as practicable, upon the average impairments of earning capacity with the additional proviso that the Secretary shall from time to time readjust this schedule of ratings in accordance with experience. To accord justice to the exceptional case where the schedular evaluation is inadequate to rate a single service-connected disability, the Director of the Compensation Service or his or her delegatee, upon field station submission, is authorized to approve on the basis of the criteria set forth in this paragraph (b), an extra-schedular evaluation commensurate with the actual impairment of earning capacity due exclusively to the referred disability. The governing norm in these exceptional cases is a finding by the Director of the Compensation Service or delegatee that application of the regular schedular standards is impractical because the referred disability is so exceptional or unusual due to such related factors as marked interference with employment or frequent periods of hospitalization.

* * * * *

(Authority: 38 U.S.C. 501(a), 1155)

[FR Doc. 2016–08937 Filed 4–19–16; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2015–0243; A–1–FRL–9945–11–Region 1]

Air Plan Approval; Vermont; Stage I Vapor Recovery Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Vermont. This revision includes regulatory amendments that clarify Stage I vapor recovery requirements at gasoline dispensing facilities (GDFs). The intended effect of this action is to approve Vermont's revised Stage I vapor recovery regulations. This action is being taken in accordance with the Clean Air Act.

DATES: Written comments must be received on or before May 20, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2015–0243 at *http://www.regulations.gov,* or via email to *Arnold.Anne@epa.gov.* For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Ariel Garcia, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code: OEP05–2), Boston, MA 02109–3912, telephone number (617) 918–1660, fax number (617) 918–0660, email *garcia.ariel@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Dated: April 1, 2016.

H. Curtis Spalding,

Regional Administrator, EPA New England.

[FR Doc. 2016–09067 Filed 4–19–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2014–0821; FRL–9945–10–Region 6]

Approval and Promulgation of Implementation Plans; Louisiana; Revisions to the New Source Review State Implementation Plan; Air Permit Procedure Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing approval of portions of ten revisions to the Louisiana New Source Review (NSR) State Implementation Plan (SIP) submitted by the Louisiana Department of Environmental Quality (LDEQ). These revisions to the Louisiana SIP provide updates to the minor NSR and nonattainment new source review (NNSR) permit programs in Louisiana contained within the Chapter 5 Permit Procedures and Chapter 6 Regulations on Control of Emissions through the Use of Emission Reduction Credits (ERC) Banking rules as initially submitted on November 15, 1993, and the subsequent rule amendments for Air Permit Procedure revisions submitted through November 3, 2014. The EPA's final action will incorporate these rules into the federally approved SIP. The rules generally enhance the SIP and were evaluated in accordance with CAA guidelines for the EPA action on SIP submittals and general rulemaking authority. This proposed action is consistent with the requirements of section 110 of the CAA.

DATES: Written comments must be received on or before May 20, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2014–0821, at *http://www.regulations.gov* or via email to *kordzi.stephanie@epa.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact Stephanie Kordzi, 214–665–7520, *kordzi.stephanie@epa.gov*. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets*.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material), and some may not be publicly available at either location (*e.g.,* CBI).

FOR FURTHER INFORMATION CONTACT: Stephanie Kordzi, telephone (214) 665–7520, *kordzi.stephanie@epa.gov*. To inspect the hard copy materials, please schedule an appointment with Stephanie Kordzi at 214–665–7520 or Mr. Bill Deese at 214–665–7253.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean the EPA.

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I. Summary of State SIP Submittals for Chapter 5 and Chapter 6 Air Permit Program

The EPA is proposing approval of the SIP revisions submitted by the State of Louisiana. The proposed revisions modify Louisiana's minor NSR and NNSR Chapters 5 Permit Procedure and Chapter 6 Regulations on Control of Emissions through the Use of Emission Reduction Credits (ERC) Banking rules enacted at Louisiana Administrative Code (LAC) 33:III.501, 502, 503, 504, 511, 513.A.2., 513.A.3, 513.A.4., 513.A.5., 513.A.6., 513.B., 513.C., 515, 517, 519.A., 519.B., 521, 523, 525, 527, 529, 601, 603, 605, 607, 615, and 619. The revisions provide clarity to the rules, correct contradictory language, update permit application and fee requirements, revise the rules to conform to the latest Louisiana laws, and add to the "Insignificant Activities List".

A. November 15, 1993, Submittal

On November 15, 1993, the LDEQ submitted revisions to the SIP. This SIP submittal incorporated revisions to the Louisiana Administrative Code (LAC) during the year 1993. It includes final revised regulation enacted at LAC 33:III, sections 501, 502, 503, 504, 505, 507, 511, 513, 515, 517, 519, 521, 523, 525, 527, 529, and 533. The EPA is proposing to take action on sections 501, 502, 503, 511, 513, 515, 517, 519, 523, 525, 527, and 529. The EPA already approved section 504 (NNSR Procedures) into the SIP on October 10, 1997, 62 FR 52948. The 504 rules were then subsumed into later SIP approval revisions. The EPA returned sections 505, 507, and 533 due to their association with the Title V operating permit program requirements to the LDEQ on August 4, 2015. The EPA is not taking action and severing section 513.A.1 (which references section 531), section 519.C. (which references section 531), and section 531 regarding public notice. Those specific sections will be addressed in a separate action. The EPA is not taking action and is severing section 501.B.1.d. at this time.

B. November 10, 1994, Submittal

On November 10, 1994, the LDEQ submitted revisions to the SIP. This SIP submittal incorporated revisions to the LAC published in the Louisiana Register on November 20, 1994. It includes final revised regulations enacted at LAC 33:III, sections 501, 507, 517, 521, 527, and 533. The EPA is proposing to take action on sections 501, 517, 521, and 527. The EPA returned sections 507 and 533 due to their association with the title V operating permit program requirements to LDEQ on August 4, 2015.

C. July 25, 1997, Submittal

On July 25, 1997, the LDEQ submitted the 1996 General revisions to the SIP. This SIP submittal incorporated revisions to LAC 33:III, sections 501, 504, 509, and 517 adopted during 1996. The EPA is proposing action on section 517. The EPA already approved sections 501, 504 and 509 on November 5, 2015 (80 FR 68451). Section 504 was approved in 1997 as noted above and revisions have been subsumed into the SIP since the EPA's last action approving changes to the 504 rules on September 30, 2002 (67 FR 61260).

D. June 22, 1998, Submittal

On June 22, 1998, the LDEQ submitted the 1997 General revisions to the SIP. This SIP submittal incorporated revisions to the LAC during the year 1997 and revisions to the LAC not previously federally approved. It includes final revised regulation at LAC 33:III, sections 501, 509, and 517. The EPA is proposing action on sections 501 and 517. The EPA already approved section 509 on November 5, 2015 (80 FR 68451).

E. June 27, 2003, Submittal

On June 27, 2003, the LDEQ submitted the 2002 General revisions to the SIP. This SIP submittal incorporated revisions to the LAC during the year 2002. It includes final revised regulation LAC 33:III, section 501 covering the insignificant activities list. The EPA is proposing action on section 501.

F. May 5, 2006, Submittal

On May 5, 2006, the LDEQ submitted the 2005 General revisions to the SIP. This SIP submittal incorporated revisions to the LAC during the year 2005 and revisions to the LAC not previously federally approved. It includes final revised regulation sections LAC 33:III.501, 504, 505, 507, 509, 517, and 521. The EPA is proposing action on sections 501, 517, and 521. Since the last approval of section 504 in 2002, the EPA approved changes to section 504 as well as section 509 on November 5, 2015 (80 FR 68451). The EPA returned to LDEQ sections 505 and 507.C.3. due to their association with the title V operating permit program requirements on August 4, 2015. The EPA returned to LDEQ sections 507.H.4 and 507.H.5.d. due to their association with the title V operating permit program requirements on February 2, 2016.

G. November 9, 2007, Submittal

On November 9, 2007, the LDEQ submitted the 2006 General revisions to the SIP. This SIP submittal incorporated revisions to the LAC during the year 2006 and revisions to the LAC not previously federally approved. It includes final revised regulation sections at LAC 33:III.501, 504, 509, 513, 531, and 607. The EPA is proposing action on sections 513.A.2. and 513.A.6. The EPA already approved sections 501, 504, 509, and 607 on November 5, 2015 (80 FR 68451). The EPA is not taking action and severing section 513.A.1. (which references section 531) and section 531 regarding public notice. Those specific sections will be addressed in a separate action.

H. August 14, 2009, Submittal

On August 14, 2009, the LDEQ submitted the 2007 General revisions to the SIP. This SIP submittal incorporated revisions to the LAC during the year 2007 and includes revisions to the LAC not previously federally approved. It includes final revised regulation sections LAC 33:III.501, 504, 505, 506, and 507 contained in Chapter 5. It also includes final revised regulation sections LAC 33:III.603, 605, 607, 613, and 615 contained in Chapter 6. The EPA is proposing action on section 501. The EPA already approved sections 504, 603, 605, 607, 613, and 615 on November 5, 2015 (80 FR 68451). The EPA already approved section 506 on April 17, 2014, (79 FR 21631). The EPA returned section 505 to LDEQ on February 2, 2016, because it addresses the Acid Rain Program Permitting Requirements, which are implemented in the title V program rather than the SIP. The EPA returned section 507 to LDEQ on February 2, 2016, because it concerns the title V program which is not part of a SIP.

I. August 29, 2013, Submittal

On August 29, 2013, the LDEQ submitted the 2008–2010 Volatile Organic Compounds Rule SIP Revision. This SIP submittal incorporated revisions to the LAC during the years 2008–2010 and includes revisions to final revised regulation section LAC 33:III.523. The EPA is proposing action on section 523.

J. November 3, 2014, Submittal

On November 3, 2014, the LDEQ submitted the 2011–2013 Permit Rule revisions to the SIP. This SIP submittal incorporated revisions to the LAC during the years 2011–2012. It includes final revised regulation sections LAC 33:III.211, 223, 317, 319, 501, 502, 503, 504, 523, 537, 601, 603, 605, 607, 615, 619, and 2132. The EPA is proposing action on sections 501, 502, 503, 504, 523, 601, 603, 605, 607, 615, and 619. The LDEQ withdrew sections 211 and 223 from SIP consideration by letter on December 2, 2015. The EPA is not acting on sections 317, 319, and 2132 because this action only addresses Chapters 5 and 6. The EPA is not taking action on section 537 (AQ286) and revised citation 501.B.2.d.i.(a) (AQ270) because the original 2008–2010 rule revision containing these sections was never submitted to the EPA. The EPA is not taking action and is severing section 501.B.1.d. at this time.

Table 1 below summarizes the changes that are in the SIP revision submittals. A summary of the EPA's evaluation of each section and the basis for our proposed approval is included in this rulemaking. The accompanying Technical Support Document (TSD) includes a detailed evaluation of the submittals and our rationale. The TSD may be accessed online at *www.regulations.gov,* Docket No. EPA–R06–OAR–2014–0821.

TABLE 1—SUMMARY OF EACH NSR SIP SUBMITTAL AFFECTED BY THIS ACTION

Title of SIP submittal	Date submitted to EPA	Date of state adoption	Regulations affected
Air Permit Procedure Revisions	11/15/1993	1993	Sections 501, 502, 503, 511, 513, 515, 517, 519.A., 519.B., 521, 523, 525, 527, and 529.
Air Permit Procedure Revisions	11/10/1994	11/20/1994	Sections 501, 517, 521, and 527.
Air Permit Procedure Revisions	7/25/1997	1996	Section 517.
Air Permit Procedure Revisions	6/22/1998	1997	Sections 501 and 517.
Air Permit Procedure Revisions	6/27/2003	2002	Section 501.
Air Permit Procedure and ERC Banking Revisions	5/5/2006	2005	Sections 501, 517, and 521.
Air Permit Procedure and ERC Banking Revisions	11/9/2007	2006	Section 513.
Air Permit Procedure Revisions	8/14/2009	2007	Section 501.
2008–2010 Volatile Organic Compounds Rule	8/29/2013	9/20/2008	Section 523.
2011–2013 Permit Rule SIP Revision	11/3/2014	2011	Sections 501, 502, 503, 504, 523, 601, 603, 605, 615, and 619.

II. Evaluation

A. Revisions to the NSR Air Permit Procedures

We evaluated the SIP submissions and are proposing approval of the Louisiana Permit Procedures Revisions and ERC Banking Provisions, as identified, beginning with the November 15, 1993, through the November 3, 2014, submissions. The Act at section 110(a)(2)(C) requires states to develop and submit to the EPA for approval into the SIP, preconstruction review programs applicable to new and modified stationary sources of air pollutants for attainment and nonattainment areas that cover both major and minor new sources and modifications, collectively referred to as the NSR SIP. The CAA NSR SIP program is composed of three separate programs: Prevention of Significant Deterioration (PSD), NNSR, and Minor NSR. PSD is established in part C of title I of the CAA and applies in areas that meet the National Ambient Air Quality Standards (NAAQS), *i.e.,* "attainment areas", as well as areas where there is insufficient information to determine if the area meets the NAAQS, *i.e.,* "unclassifiable areas." The NNSR SIP program is established in part D of title I of the CAA and applies in areas that are not in attainment of the NAAQS, *i.e.,* "nonattainment areas." The Minor NSR SIP program addresses construction or modification activities that do not emit, or have the potential to emit, beyond certain major source thresholds and thus do not qualify as "major" and applies regardless of the designation of the area in which a source is located. This particular SIP action will address the minor NSR and NNSR permitting programs.

The EPA regulations governing the criteria that states must satisfy for the EPA approval of the NSR programs as part of the SIP are contained in 40 CFR 51.160–51.166. However, the PSD rules are not being evaluated in this action and therefore 40 CFR 51.166 does not provide a basis for a decision in this proposal. In addition, there are several provisions in 40 CFR part 51 that apply generally to all SIP revisions. As stated above, 40 CFR 51.160 establishes the enforceable procedures that all NSR programs must include. 40 CFR 51.160–51.164 require that a SIP revision demonstrate that the adopted rules will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA. Based upon our evaluation of the submittals, the EPA has concluded that the submittals as ultimately revised meet the requirements of the CAA section 110(a).

Our evaluation found that May 20, 2012 and November 20, 2012 adopted revisions to the NNSR program, submitted on November 3, 2014 revised the program to address all nonattainment area pollutants and was necessary to ensure the Louisiana NNSR offset bank is able to be used in future instances where the State is designated nonattainment for other criteria pollutants. Prior to this action, the EPA proposed full approval of the major PSD and NNSR permitting program update, (80 FR 50240), specifically those NNSR requirements submitted prior to November 3, 2014. That action was finalized on November 5, 2015 (80 FR 68451).

Our evaluation of the proposed minor NSR revisions found the proposed revisions address requirements that enhance the SIP. These changes (1) define insignificant activities that will not require permitting; (2) correct contradictory language in the insignificant activities list; (3) provide edits to the Permit Procedure Rule as requested by the EPA; (4) include procedures for incorporating test results; (5) unify and streamline name and ownership changes for all media; and (6) revise references to various LDEQ divisions. All of these changes will help to ensure that the LA Minor NSR rules to meet the CAA requirements.

B. Does the proposed approval of the Louisiana minor and nonattainment NSR Air Permit procedure revisions interfere with attainment, reasonable further progress, or any other applicable requirement of the Act?

We have determined that the regulations submitted to the EPA for approval as SIP revisions meet the requirements of CAA section 110(l). The EPA's conclusion is based upon a line-by-line comparison of the proposed revisions with the federal requirements. The goal is to demonstrate that the proposed revisions will not interfere with the attainment of the NAAQS, Rate of Progress, RFP or any other applicable requirement of the CAA.

The EPA prepared a CAA section 110(l) analysis in its review of the proposed list to serve as a basis for demonstrating noninterference for the affected pollutants for any applicable requirement for attainment and reasonable further progress such as: (1) Turning a maintenance area back into a nonattainment area; (2) turning an attainment/unclassifiable area into a nonattainment area; (3) leading to a PSD increment exceedance; (4) causing the nonattainment area to have higher violations; or (5) causing a nonattainment area to have a greater number of NAAQS standard exceedances. This evaluation is contained in the individual tables for each regulatory section and is found in Section IV Conclusion of the TSD. The TSD can be found in the docket for this action. The comparison demonstrates that the changes made to the Louisiana rules reflect either the same regulatory language, or are consistent with the requirements found in the federal rules. Further, the Additional Comments to the table contained in section IV for the proposed revisions to section 501 in the TSD contain supporting technical documentation establishing in detail a CAA section 110(l) analysis regarding the tables of Insignificant Activities defined in section 501. Specifically, the Section 501.B.3, Insignificant Activities list, submitted on 5/5/2006, revised the former submittal 11/10/1994, which was then subsumed by the 6/27/2003 submittal.

Our finding is based in part on the historic trends of ambient air quality for the NAAQS pollutants, including ozone and sulfur dioxide (SO_2), since those pollutants have caused past air quality issues.[1] The EPA took into consideration the following factors when making the decision to propose approval into the SIP of the permit exemptions listed in the Insignificant Activities tables in section 501:

- Compliance with the 8-hour ozone standard has improved state-wide with ozone pollutant concentrations trending downward with an average 23% decrease in ozone since the late 1980's. This average decrease represents air monitoring values in the Louisiana cities of Baton Rouge, Lake Charles, Monroe, New Orleans, and Point Coupee Parish. 8-Hour ozone trends are listed in the table below:

LA cities	8-Hour ozone (ppb) 1986	8-Hour ozone (ppb) 2015	Reduction (%)
Baton Rouge	98	71	28
Lake Charles (Calcasieu Parish)	92	67	27
Monroe	73	61	16
New Orleans	89	70	22
Pointe Coupe Parish	85	67	21

- The Baton Rouge marginal ozone nonattainment area is currently monitoring attainment for the 2008 ozone NAAQS. The 8-Hour ozone values have dropped from 83 ppb in 2006–2008 down to 71 ppb design value for 2015 in Baton Rouge.
- Compliance with the SO_2 standard has improved significantly state-wide with SO_2 pollutant concentrations trending downward with an average 55% decrease in SO_2 since the mid 2000's. This average value represents the Louisiana air monitoring locations of Baton Rouge, Lake Charles, Chalmette, Port Allen, Shreveport, and Meraux. SO_2 trends are listed in the table below:

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[1] Supporting documentation is contained in the monitoring data of ambient air quality for NAAQS criteria for cities located throughout Louisiana. See *http://www.deq.louisiana.gov/portal/DIVISIONS/Assessment/AirFieldServices/AmbientAirMonitoringProgram/AmbientAirMonitoringDataandReports.aspx.*

LA cities	SO_2 (ppb) 2007	SO_2 (ppb) 2013	Reduction (%)
Shreveport	21	12	43
Lake Charles	42	32	24
Baton Rouge	65	19	71
Meraux	32	19	41
Chalmette	331	112	66
Port Allen	143	23	84

- The EPA determined the St. Bernard 2010 SO_2 NAAQS nonattainment area was caused primarily by one large source of SO_2 emissions, the Rain CII Carbon LLC—Chalmette Coke Plant. The LDEQ is currently preparing a proposed SIP attainment demonstration, "*St. Bernard Parish SO_2 Nonattainment Area Louisiana SIP Revision*," which was submitted to the EPA on April 1, 2015, for review. The EPA provided comments and is working with the LDEQ to ensure the SIP revision contains the appropriate emission limits to bring the area into attainment status. The St. Bernard SO_2 nonattainment area has documented SO_2 pollutant concentrations decreasing from a 331 ppm SO_2 design value in 2009 down to a 159 ppm SO_2 design value in 2014.
- Compliance with the Particulate Matter (PM_{10}) standard is maintained and is below regulatory NAAQS levels. PM_{10} emission concentrations have trended downward an average 25% statewide since the mid 2000's. The average statewide 24-hour PM_{10} concentration is 28 ug/m^3 which is 19% of the NAAQS level for PM_{10}. The average value represents the Louisiana air monitoring locations of Baton Rouge, New Orleans, Chalmette, Shreveport, and Lafayette.
- Compliance with the average statewide annual $PM_{2.5}$ standards is maintained with an average annual maximum concentration of 10.8 ug/m^3, which is below the average annual primary standard for $PM_{2.5}$ of 12 ug/m^3.
- The Baton Rouge Capitol air monitor is the only monitor collecting samples and analyzing for Carbon Monoxide (CO). The 2014 annual average CO value was 0.26 ppm and the maximum monitored value was 5.34 ppm which is below the 9 ppm standard (8 hour averaging time).

Since the list of exempted sources included in the proposed revisions have historically operated without coverage by an air permit and there are no anticipated increases in emissions or in the number of these type of sources resulting from the approval of the exempted list into the SIP, the EPA has determined the possibility of a low level of potential impacts on ambient air quality as a result of the emission sources and activities included in the proposed LAC 33:III section 501 exemptions list and this conclusion is supported by ambient air monitoring trends in the State of Louisiana.

Our determination is consistent with our assessment of the environmental insignificance of these emissions. In addition, the LDEQ has been carrying out the minor NSR air permitting program based on the codification of their permitting policy without any indication that these permit exempted sources have interfered with attainment or reasonable further progress or increased PSD increment. Therefore, the EPA proposes to approve the exemptions lists in section 501 into the Louisiana SIP.

Based on supporting air quality monitoring data documenting air quality improvements throughout the State, the EPA proposes to approve Section 501 containing the list of the exempted sources into the Louisiana SIP since it meets the requirements of CAA section 110(l) and since state agencies are provided the latitude to define the types and sizes of facilities, buildings, structures, or installations subject to review in accordance with 40 CFR 51.160(e). We believe the implementation of this rule will not interfere with any applicable requirement concerning attainment and reasonable further progress, maintaining PSD increment, or any other applicable requirement of the CAA.

III. Proposed Action

The EPA proposes approval of the identified sections of the revisions to the air permitting procedures as submitted as revisions to the Louisiana NSR SIP Permit program on November 15, 1993, November 10, 1994, July 25, 1997, June 22, 1998, June 27, 2003, May 5, 2006, November 9, 2007, August 14, 2009, August 29, 2013, and November 3, 2014, submittals. The EPA has made the determination in accordance with the CAA and the EPA regulations at 40 CFR 51.160–51.165. Therefore, under section 110 and part C of the Act, and for the reasons presented above and in our accompanying TSD, the EPA proposes approval of the revisions to the Louisiana SIP identified in Table 2 below which summarizes each regulatory citation that is affected by this action.

TABLE 2—SUMMARY OF EACH REGULATION THAT IS AFFECTED BY THIS ACTION

Section	Date submitted to EPA as SIP amendment	Affected regulation
Section 501—Scope and Applicability		
Section 501.A	11/15/1993	Sections 501.A.1. and A.2.
Section 501.B	11/15/1993	Sections 501.B.1.a., B.1.b., B.1.c., B.2., B.3., B.4., B.5., B.6., and B.7.
	11/10/1994	Sections 501.B.5.A and 501.B.5.B.
	6/22/1998	Sections 501.B.3.c. and 501.B.3.d.
	6/27/2003	Section 501.B.5.
	5/5/2006	Sections 501.B.5, 501.B.32, and 501.D.a.–d.
	11/3/2014	Sections 501.B.1.c., 501.B.1.e., 501.B.4.a.i., 501.B.5. Table 1, and 501.B.8.
Section 501.C	11/15/1993	Sections 501.C.1., C.2., C.3., C.4., C.5., C.6., C.7., C.8., and C.9.
	5/5/2006	Section 501.C.1.
	11/9/2007	Sections 501.C.11., C.12., and C.13.

TABLE 2—SUMMARY OF EACH REGULATION THAT IS AFFECTED BY THIS ACTION—Continued

Section	Date submitted to EPA as SIP amendment	Affected regulation
	8/14/2009	Section 501.C.1.
Section 502—Definitions		
Section 502	11/15/1993	Section 502 Definitions—*Clean Air Act, EPA, Final Permit, Fugitive Emissions, Permit Revision, Permit Renewal, Permitting Authority, Potential to Emit, Proposed Permit, Stationary Source.* *Portions of definitions as outlined in Technical Support Document for: Emissions Unit, Regulated Air Pollutant, Responsible Official, and title I Modification.*
	11/3/2014	Section 502.A. Definitions—*Nonroad Engine.*
Section 503—Minor Source Permit Requirements		
Section 503.A	11/15/1993	Section 503.A.
Section 503.B	11/15/1993	Sections 503.B., 503.B.1., 503.B.2., and 503.B.3.
	11/3/2014	Section 503.B.2.
Section 504—Nonattainment New Source Review (NNSR) Procedures and Offset Requirements in Specified Parishes		
504.A	11/3/2014	Sections 504.A.2., 504.A.3., and 504.A.4.
504.D	11/3/2014	Section 504.D.5.
504.F	11/3/2014	Sections 504.F.1., 504.F.2.
504.M	11/3/2014	Sections 504.M.., 504.M.1, 504.M.2.a.–c., 504.M.3., and 504.M.4.
Section 511—Emission Reductions		
Section 511	11/15/1993	Section 511.
Section 513—General Permits, Temporary Sources, and Relocation of Portable Facilities		
Section 513.A	11/15/1993	Sections 513.A.2., 513.A.3., 513.A.4., and 513.A.5.
	11/9/2007	Sections 513.A.2., 513.A.6.
Section 513.B	11/15/1993	Sections 513.B.1., B.2., B.3., and B.4.
Section 513.C	11/15/1993	Sections 513.C.1., 513.C.2., and 513.C.3.
Section 515—Oil and Gas Wells and Pipelines Permitting Provisions		
Section 515	11/15/1993	Section 515.
Section 515.A	11/15/1993	Sections 515.A.1., 515.A.2, 515.A.3., 515.A.4., 515.A.5.
Section 515.B	11/15/1993	Sections 515.B.1., 515.B.2.
Section 517—Permit Applications and Submittal of Information		
Section 517.A	11/15/1993	Sections 517.A., 517.A.1., 517.A.2., 517.A.3.
	6/22/1998	Section 517.A.3.
Section 517.B	11/15/1993	Sections 517.B., 517.B.1., 517.B.2., and 517.B.3.
Section 517.C	11/15/1993	Section 517.C.
Section 517.D	11/15/1993	Sections 517.D., 517.D.1, 517.D.2., 517.D.3., 517.D.4., 517.D.5., 517.D.6., 517.D.7., 517.D.8., 517.D.9., 517.D.10., 517.D.11., 517.D.12., 517.D.13., 517.D.14., 517.D.15., 517.D.16., 517.D.17., and 517.D.18.
Section 517.E	11/15/1993	Sections 517.E., 517.E.1., 517.E.2., 517.E.3., 517.E.4., 517.E.5., 517.E.6., 517.E.7., and 517.E.8.
Section 517.F	11/15/1993	Sections 517.F., 517.F.1., 517.F.2., 517.F.3., 517.F.4., 517.F.5., 517.F.6., 517.F.7., and 517.F.8.
	11/10/1994	Section 517.F.1.
	7/25/1997	Section 517.F.
Section 517.G	11/15/1993	Section 517.G.
	5/5/06	Section 517.G.
Section 519—Permit Issuance Procedures for New Facilities, Initial Permits, Renewals and Significant Modifications		
Section 519.A	11/15/1993	Sections 519.A., 519.A.1., 519.A.2., 519.A.3., and 519.A.4.
Section 519.B	11/15/1993	Sections 519.B., 519.B.1., and 519.B.2.
Section 521—Administrative Amendments		
Section 521.A	5/5/06	Section 521.A.3.
	11/10/1994	Section 521.A.6.

TABLE 2—SUMMARY OF EACH REGULATION THAT IS AFFECTED BY THIS ACTION—Continued

Section	Date submitted to EPA as SIP amendment	Affected regulation
Section 523—Procedures for Incorporating Test Results		
Section 523.A	11/15/1993	Sections 523.A.1. and A.2.
	11/3/2014	Section 523.A.1.b.
Section 523.B	11/15/1993	Sections 523.B.1., B.2., B.3., and B.4.
	8/29/2013	Sections 523.B.3., 523.B.4., and 523.B.5.
Section 525—Minor Modifications		
Section 525.A	11/15/1993	Sections 525.A., 525.A.1., 525.A.2., and 525.A.3.
Section 525.B	11/15/1993	Sections 525.B., 525.B.1., and 525.B.2.
Section 527—Significant Modifications		
Section 527.A	11/15/1993	Sections 527.A., 527.A.1., 527.A.2., and 527.A.3.
	11/10/1994	Sections 527.A.2., 527.A.2.c.
Section 527.B	11/15/1993	Sections 527.B., 527.B.1., 527.B.2., 527.B.3., 527.B.4., and 527.B.5.
	11/10/1994	Section 527.B.
Section 529—Reopenings for Cause		
Section 529.A	11/15/1993	Sections 529.A., 529.A.1., and 529.A.2.
Section 529.B	11/15/1993	Sections 529.B., 529.B.1., 529.B.2., 529.B.3., and 529.B.4.
Section 601—Purpose		
Section 601.A	11/3/2014	Section 601.A.
Section 603—Applicability		
Section 603.A	11/3/2014	Section 603.A.
Section 603.B	11/3/2014	Section 603.B.
Section 605—Definitions		
Section 605.A	11/3/2014	Section 605.A. Definitions—*Bankable Emission Reductions and Offset,* Repealed Definitions—*Base Case Inventory, Base Line Inventory, Current Total Point-Source Emissions Inventory, Modeled Parishes.*
Section 607—Determination of Creditable Emission Reductions		
Section 607.C	11/3/2014	Sections 607.C., 607.C.1., and 607.C.4.
Section 615—Schedule for Submitting Applications		
Section 615.B	11/3/2014	Section 615.B.
Section 619—Emission Reduction Credit Bank		
Section 619.A	11/3/2014	Section 619.A.

IV. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Louisiana regulations as described in the Proposed Action section above. We have made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the EPA Region 6 office.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities

under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, and Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 7, 2016.

Ron Curry,

Regional Administrator, Region 6.

[FR Doc. 2016–08927 Filed 4–19–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[EPA–HQ–OW–2015–0804; FRL–9945–03–OW]

RIN 2040–AF59

Proposal of Certain Federal Water Quality Standards Applicable to Maine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes federal Clean Water Act (CWA) water quality standards (WQS) that would apply to certain waters under the state of Maine's jurisdiction. EPA proposes human health criteria (HHC) to protect the sustenance fishing use in those waters in Indian lands and for waters subject to sustenance fishing rights under the Maine Implementing Act (MIA) based on a fish consumption rate that represents an unsuppressed level of fish consumption by the four federally recognized tribes. EPA proposes six additional WQS for waters in Indian lands in Maine, two WQS for all waters in Maine including waters in Indian lands, and one WQS for waters in Maine outside of Indian lands. These proposed WQS take into account the best available science, including local and regional information, as well as applicable EPA policies, guidance, and legal requirements, to protect human health and aquatic life. EPA proposes these WQS to address various disapprovals of Maine's standards that EPA issued in February, March, and June 2015, and to address the Administrator's determination that Maine's disapproved HHC are not adequate to protect the designated use of sustenance fishing for certain waters.

DATES: Comments must be received on or before June 20, 2016.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2015–0804 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the Web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www.epa.gov/dockets/commenting-epa-dockets.* EPA is offering two virtual public hearings so that interested parties may also provide oral comments on this proposed rule. The first hearing will be on Tuesday, June 7, 2016 from 5:00 p.m. to 7:00 p.m. Eastern Daylight Time. The second hearing will be on Thursday, June 9, 2016 from 9:00 a.m. to 11:00 a.m. Eastern Daylight Time. For more details on the public hearings and a link to register, please visit *http://www.epa.gov/wqs-tech/proposed-rule-maine-water-quality-standards.*

FOR FURTHER INFORMATION CONTACT: Jennifer Brundage, Office of Water, Standards and Health Protection Division (4305T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 566–1265; email address: *Brundage.jennifer@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposed rule is organized as follows:

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  B. EPA's Disapprovals of Portions of Maine's Water Quality Standards
  C. Scope of Waters
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  B. Proposed WQS for Waters in Indian Lands in Maine
  C. Proposed WQS for All Waters in Maine
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V. Economic Analysis
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VI. Statutory and Executive Order Reviews
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  B. Paperwork Reduction Act

C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132
F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)
G. Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)
H. Executive Order 13211 (Actions That Significantly Affect Energy Supply, Distribution, or Use)
I. National Technology Transfer and Advancement Act of 1995
J. Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations)

I. General Information

Does this action apply to me?

Entities such as industries, stormwater management districts, or publicly owned treatment works (POTWs) that discharge pollutants to waters of the United States in Maine could be indirectly affected by this rulemaking, because federal WQS promulgated by EPA are applicable to CWA regulatory programs, such as National Pollutant Discharge Elimination System (NPDES) permitting. Citizens concerned with water quality in Maine, including members of the federally recognized Indian tribes in Maine, could also be interested in this rulemaking. Dischargers that could potentially be affected include the following:

TABLE 1—DISCHARGERS POTENTIALLY AFFECTED BY THIS RULEMAKING

Category	Examples of potentially affected entities
Industry	Industries discharging pollutants to waters of the United States in Maine.
Municipalities	Publicly owned treatment works or other facilities discharging pollutants to waters of the United States in Maine.
Stormwater Management Districts	Entities responsible for managing stormwater runoff in the state of Maine.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities that could be indirectly affected by this action. Any parties or entities who depend upon or contribute to the water quality of Maine's waters could be affected by this proposed rule. To determine whether your facility or activities could be affected by this action, you should carefully examine this proposed rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. Background

A. Statutory and Regulatory Background

1. Clean Water Act (CWA)

CWA section 101(a)(2) establishes as a national goal "water quality which provides for the protection and propagation of fish, shellfish, and wildlife, and recreation in and on the water, wherever attainable." These are commonly referred to as the "fishable/swimmable" goals of the CWA. EPA interprets "fishable" uses to include, at a minimum, designated uses providing for the protection of aquatic communities and human health related to consumption of fish and shellfish.[1]

CWA section 303(c) (33 U.S.C. 1313(c)) directs states to adopt water quality standards (WQS) for waters under their jurisdiction subject to the CWA. CWA section 303(c)(2)(A) and EPA's implementing regulations at 40 CFR part 131 require, among other things, that a state's WQS specify appropriate designated uses of the waters, and water quality criteria to protect those uses that are based on sound scientific rationale. EPA's regulations at 40 CFR 131.11(a)(1) provide that such criteria "must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use." In addition, 40 CFR 131.10(b) provides that "[i]n designating uses of a water body and the appropriate criteria for those uses, the state shall take into consideration the water quality standards of downstream waters and ensure that its water quality standards provide for the attainment and maintenance of the water quality standards of downstream waters."

States are required to review applicable WQS at least once every three years and, if appropriate, revise or adopt new standards (CWA section 303(c)(1)). Any new or revised WQS must be submitted to EPA for review, to determine whether it meets the CWA's requirements, and for approval or disapproval (CWA section 303(c)(2)(A) and (c)(3)). If EPA disapproves a state's new or revised WQS, the CWA provides the state ninety days to adopt a revised WQS that meets CWA requirements, and if it fails to do so, EPA shall promptly propose and then promulgate such standard unless EPA approves a state replacement WQS first (CWA section 303(c)(3) and (c)(4)(A)). If the state adopts and EPA approves a state replacement WQS after EPA promulgates a standard, EPA then withdraws its promulgation. CWA section 303(c)(4)(B) authorizes the Administrator to determine, even in the absence of a state submission, that a new or revised standard is necessary to meet CWA requirements. Upon making such a determination, EPA shall promptly propose, and then within ninety days promulgate, any such new or revised standard unless prior to such promulgation, the state has adopted a revised or new WQS which EPA determines to be in accordance with the CWA.

Under CWA section 304(a), EPA periodically publishes water quality criteria recommendations for states to consider when adopting water quality criteria for particular pollutants to protect the CWA section 101(a)(2) goal uses. For example, in 2015, EPA updated its 304(a) recommended criteria for human health for 94 pollutants (the 2015 criteria update).[2] Where EPA has published recommended criteria, states should consider adopting water quality criteria based on EPA's CWA section 304(a) criteria, section 304(a) criteria modified to reflect site-specific conditions, or other scientifically defensible methods (40 CFR 131.11(b)(1)). CWA section 303(c)(2)(B) requires states to adopt numeric criteria for all toxic pollutants listed pursuant to CWA section 307(a)(1) for which EPA has published 304(a) criteria, as necessary, to support the states' designated uses.

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[1] USEPA. 2000. Memorandum #WQSP–00–03. U.S. Environmental Protection Agency, Office of Water, Washington, DC. *http://water.epa.gov/scitech/swguidance/standards/upload/2000_10_31_standards_shellfish.pdf.*

[2] Final Updated Ambient Water Quality Criteria for the Protection of Human Health, (80 FR 36986, June 29, 2015). See also: USEPA. 2015. Final 2015 Updated National Recommended Human Health Criteria. U.S. Environmental Protection Agency, Office of Water, Washington, DC. *http://water.epa.gov/scitech/swguidance/standards/criteria/current/hhfinal.cfm.*

2. Maine Indian Settlement Acts

There are four federally recognized Indian tribes in Maine represented by five governing bodies. The Penobscot Nation and the Passamaquoddy Tribe have reservations and trust land holdings in central and coastal Maine. The Passamaquoddy Tribe has two governing bodies, one on the Pleasant Point Reservation and another on the Indian Township Reservation. The Houlton Band of Maliseet Indians and the Aroostook Band of Micmacs have trust lands further north in the state. To simplify the discussion of the legal framework that applies to each Tribe's territory, EPA will refer to the Penobscot Nation and the Passamaquoddy Tribe together as the "Southern Tribes" and the Houlton Band of Maliseet Indians and Aroostook Band of Micmacs as the "Northern Tribes." EPA acknowledges that these are collective appellations the tribes themselves have not adopted, and the Agency uses them solely to simplify this discussion.

In 1980, Congress passed the Maine Indian Claims Settlement Act (MICSA) that resolved litigation in which the Southern Tribes asserted land claims to a large portion of the state of Maine. 25 U.S.C. 1721, *et seq.* MICSA ratified a state statute passed in 1979, the Maine Implementing Act (MIA, 30 M.R.S. 6201, *et seq.*), which was designed to embody the agreement reached between the state and the Southern Tribes. In 1981, MIA was amended to include provisions for land to be taken into trust for the Houlton Band of Maliseet Indians, as provided for in MICSA. 30 M.R.S. 6205–A; 25 U.S.C. 1724(d)(1). Since it is Congress that has plenary authority as to federally recognized Indian tribes, MIA's provisions concerning jurisdiction and the status of the tribes are effective as a result of, and consistent with, the Congressional ratification in MICSA.

In 1989, the Maine legislature passed the Micmac Settlement Act (MSA) to embody an agreement as to the status of the Aroostook Band of Micmacs. 30 M.R.S. 7201, *et seq.* In 1991, Congress passed the Aroostook Band of Micmacs Settlement Act (ABMSA), which ratified the MSA. 25 U.S.C. 1721, Act Nov. 26, 1991, Public Law 102–171, 105 Stat. 1143. One principal purpose of both statutes was to give the Micmacs the same settlement that had been provided to the Maliseets in MICSA. See ABMSA 2(a)(4) and (5). In 2007, the U.S. Court of Appeals for the First Circuit confirmed that the Micmacs and Maliseets are subject to the same jurisdictional provisions in MICSA. *Aroostook Band of Micmacs* v. *Ryan,* 484 F.3d 41 (1st Cir. 2007). Where appropriate, this preamble discussion will refer to the combination of MICSA, MIA, ABMSA, and MSA as the "settlement acts."

As discussed in greater detail in EPA's February 2, 2015, decision disapproving certain Maine WQS in waters in Indian lands, a key purpose of the settlement acts was to confirm and expand the Tribes' land base, in the form of both reservations and trust lands, so that the Tribes may preserve their culture and sustenance practices, including sustenance fishing. For the Passamaquoddy Tribe and Penobscot Nation, the settlement acts expressly confirmed an aboriginal right to sustenance fishing in their reservations. See 30 M.R.S. 6207(4).

The legislative record of the settlement acts makes clear that Congress also intended to ensure the tribes' continuing ability to practice their traditional sustenance lifeways, including fishing, from their trust lands. With regard to the Passamaquoddy and Penobscot trust lands, legislative intent to provide for tribal sustenance fishing practices is, for example, reflected in MIA provisions which grant tribal control of fishing in certain trust waters and require the consideration of tribal sustenance practices in the setting of fishing regulations for the remaining trust waters. See 30 M.R.S. 6207(1), (3). As for the Micmacs and Maliseets, the settlement acts similarly provide for the opportunity to continue their sustenance fishing practices, though subject to more direct state regulation than that of the Passamaquoddy or Penobscot. In its February 2, 2015, decision, EPA concluded that MICSA directly provides the state with jurisdiction to set WQS in the Northern Tribes' trust lands and that MICSA also ratifies provisions of MIA that provide the state with such authority in the Southern Tribes' territories. That decision provided a detailed explanation of the legal basis for the state's jurisdiction to set WQS in waters in Indian lands in Maine. Because of the unique jurisdictional formula Congress ratified in the settlement acts, EPA is in the unusual position of reviewing state WQS in waters in Indian lands.[3]

Having disapproved certain state WQS longer than ninety days ago, as explained in section II.B., EPA is required by the CWA to promptly propose and then promulgate federal standards unless, in the meantime, the state adopts and EPA approves state replacement WQS that address EPA's disapproval.

B. EPA's Disapprovals of Portions of Maine Water Quality Standards

On February 2, March 16, and June 5, 2015, EPA disapproved a number of Maine's new and revised WQS. These disapproval letters are available in the docket for this rulemaking. These decisions were prompted by an on-going lawsuit initiated by Maine against EPA. As discussed further below, some of the disapprovals applied only to waters in Indian lands in Maine, while others applied to waters throughout the state or to waters in the state outside of Indian lands.[4] EPA concluded that the disapproved WQS did not adequately protect designated uses related to the protection of human health and/or aquatic life. EPA requested that the state revise its WQS to address the issues identified in the disapprovals. The statutory 90-day timeframe provided to the state to revise its WQS has passed with respect to all of the disapproved WQS. The state has filed an amended complaint as part of an ongoing lawsuit challenging EPA's February 2, 2015 disapprovals. Discussed below are those disapprovals for which EPA today proposes new and revised WQS.[5]

1. Disapprovals That Apply Only to Waters in Indian Lands in Maine

In its February 2015 decision, EPA concluded that MICSA granted the state authority to set WQS in waters in Indian lands. EPA also concluded that in assessing whether the state's WQS were approvable for waters in Indian lands, EPA must effectuate the CWA requirement that WQS must protect applicable designated uses and be based on sound science in consideration of the fundamental purpose for which land was set aside for the tribes under the Indian settlement acts in Maine. EPA found that those settlement acts, which include MICSA and other state and federal statutes that resolved Indian land claims in the state, provide for land to be set aside as a permanent land base for the Indian tribes in Maine, in order for the tribes to be able to continue their unique cultures, including the ability to exercise sustenance fishing practices. Accordingly, EPA interprets the state's "fishing" designated use, as applied to waters in Indian lands, to mean "sustenance fishing" and approved it as such; and EPA approved a specific sustenance fishing right reserved in one of the settlement acts as a designated use for certain tribal reservation waters. Against this backdrop, EPA approved or disapproved all of Maine's WQS as applied to waters in Indian lands after evaluating whether they satisfied CWA requirements as informed by the settlement acts.[6] EPA's disapprovals of WQS for waters in Indian lands in Maine were based on two distinct rationales, depending on the WQS.

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[3] Generally, the norm elsewhere in the country is that EPA has authority to set WQS for Indian country waters, with tribes that have obtained treatment in a manner similar to a state under CWA section 518 gaining authority to set WQS for their reservations.

[4] As discussed above, unlike in other states, Maine has the authority to promulgate WQS for waters in Indian lands in Maine, as a result of state and federal statutes that resolved the land claims of tribes in Maine.

[5] EPA's March and June decisions included several disapprovals for which no promulgation is necessary, and therefore those disapprovals are not discussed herein. Those disapprovals related to certain pesticide and chemical discharge provisions, certain exceptions to prohibitions on discharges to Class AA and SA waters, and the reclassification of a 0.3 mile segment of Long Creek that flows through Westbrook, Maine. In addition, EPA is not promulgating WQS related to certain HHC that EPA disapproved for the reasons discussed in section IV.A.1.c.

First, EPA disapproved Maine's HHC for toxic pollutants based on EPA's conclusion that they do not adequately protect the health of tribal sustenance fishers in waters in Indian lands, because they are not based on the higher fish consumption rates that reflect the tribes' sustenance fishing practices, and, in the case of one HHC, because the cancer risk level was not adequately protective of the sustenance fishing use. These disapprovals, discussed in EPA's February and March decisions, are specifically related to unique aspects of the tribes' use of waters in Indian lands. EPA proposes to promulgate WQS related to the HHC disapprovals as explained in section IV.A.

Second, EPA, in its March and June decisions, disapproved a number of WQS as applied to waters in Indian lands because those standards, although approved for other waters in Maine many years ago, no longer satisfy CWA requirements (*i.e.,* they do not protect designated uses and/or are not based on sound scientific rationale). EPA proposes to promulgate six WQS related to those disapprovals, which include: (1) Narrative and numeric bacteria criteria for the protection of primary contact recreation and shellfishing; (2) ammonia criteria for protection of aquatic life in fresh waters; (3) a statutory exception for naturally occurring toxic substances from the requirement to regulate toxic substances at the levels recommended by EPA, as it applies to HHC, and a natural conditions clause, as it applies to HHC; (4) the mixing zone policy; (5) the pH criterion for fresh waters; and (6) tidal temperature criteria. Because EPA had previously approved these provisions for other waters in Maine, the disapprovals and corresponding proposed WQS apply to only waters in Indian lands.

2. Disapprovals That Apply to All Waters in Maine, Including Waters in Indian Lands

In its March and June 2015 decisions, EPA disapproved a number of new and revised WQS as applied to all waters throughout Maine, including waters in Indian lands. These are WQS that EPA had not previously acted upon for any waters. EPA proposes two WQS for all waters in Maine related to the disapprovals of (1) a statute allowing the waiver or modification of protection and improvement laws, as it pertains to WQS; and (2) the numeric criteria for dissolved oxygen in Class A waters. EPA proposes one WQS for waters in Maine outside of Indian lands related to the disapproval of the phenol criterion for water plus organisms.[7]

C. Scope of Waters

To address the disapprovals discussed in section II.B.1, EPA proposes HHC for toxic pollutants as well as six other WQS that apply only to waters in Indian lands. For the purpose of this rulemaking, "waters in Indian lands" are those waters in the tribes' reservations and trust lands as provided for in the settlement acts.

In addition, as described below in section III, EPA proposes the same HHC for toxic pollutants pursuant to a determination of necessity under CWA 303(c)(4)(B) for the following waters: (1) Waters in Indian lands in the event that a court determines that EPA's disapprovals of HHC for such waters were unauthorized and that Maine's existing HHC are in effect; and (2) waters where there is a sustenance fishing designated use outside of waters in Indian lands.[8]

D. Applicability of EPA Promulgated Water Quality Standards When Final

Once finalized, EPA's water quality standards would apply to the relevant waters for CWA purposes. Although EPA proposes WQS to address the standards that it disapproved or for which it has made a determination, Maine continues to have the option to adopt and submit to EPA new or revised WQS that remedy the issues identified in the disapprovals and determination, consistent with CWA section 303(c) and EPA's implementing regulations at 40 CFR part 131. EPA encourages Maine to expeditiously adopt protective WQS that address the changes EPA identified in its disapprovals and determination, discussed in section III, as being necessary to meet CWA requirements. Consistent with CWA section 303(c)(4), if Maine adopts and submits new or revised WQS and EPA approves them before finalizing this proposed rule, EPA would not proceed with the final rulemaking for those waters and/or pollutants for which EPA approves Maine's new or revised standards.

If EPA finalizes this proposed rule, and Maine subsequently adopts and submits new or revised WQS that EPA finds meet CWA requirements, EPA proposes that once EPA approves Maine's WQS, they would become effective for CWA purposes, and EPA's corresponding promulgated WQS would no longer apply. EPA would still undertake a rulemaking to withdraw the federal WQS for those pollutants, but any delay in that process would not delay Maine's approved WQS from becoming the sole applicable WQS for CWA purposes. EPA solicits comment on this approach.

III. CWA 303(c)(4)(B) Determination of Necessity for HHC That Protect Sustenance Fishing

Per EPA's regulations at 40 CFR 131.11(a), water quality criteria must be sufficient to protect the designated uses. As discussed in section II.A.2. and in EPA's February 2015 disapproval, the settlement acts reflect Congress's intent that the tribes in Maine must be able to engage in sustenance fishing to preserve their culture and lifeways. In waters where the settlement acts provide for the tribes to engage in sustenance fishing, EPA interprets Maine's designated use of "fishing" to include sustenance fishing, and EPA has further approved section 6207(4) and (9) of MIA as the establishment of a sustenance fishing designated use for fresh waters in the Southern Tribes' reservations.

For the reasons discussed in EPA's February and March 2015 disapproval decisions and summarized below in section IV.A.1.b., most of Maine's HHC for toxic pollutants are not adequate to protect the sustenance fishing designated use because they are based on a fish consumption rate that does not reflect the tribes' unsuppressed sustenance fishing level of consumption. Accordingly, for the waters in Maine where there is a sustenance fishing designated use and Maine's existing HHC are in effect, EPA hereby determines under CWA section 303(c)(4)(B) that new or revised WQS for the protection of human health are necessary to meet the requirements of the CWA for such waters. EPA therefore proposes HHC for such waters in this rule in accordance with this section 303(c)(4)(B) determination. The specific HHC to which this determination and corresponding proposal apply are set forth in Table 3. This determination also applies to Maine's HHC for arsenic (including, specifically, Maine's cancer risk level of 10–4 for arsenic), thallium, and dioxin. As discussed in section IV.A.1.c., EPA is reserving its proposal for criteria for these three HHC until a later date, pending the outcome of additional scientific assessments.

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[6] Because EPA had never previously acted on any Maine WQS for waters in Indian lands, they remained "new or revised" WQS as to those waters, even though EPA had approved many of them for other state waters. They were therefore subject to EPA review and approval or disapproval pursuant to CWA section 303(c).

[7] EPA proposes a separate phenol criterion for water plus organisms for the waters in Indian lands.

[8] EPA has included in the docket for this rulemaking a Technical Support Document, entitled "Scope of Waters," which provides further information regarding, for purposes of this proposed rulemaking, the waters that are included in the term "waters in Indian lands" and the waters where the designated use of sustenance fishing applies.

This determination applies to two groups of waters in Maine:

1. Any waters in Indian lands in Maine for which a court in the future determines that EPA's 2015 disapprovals of HHC for such waters were unauthorized and that Maine's existing HHC are in effect. Maine has challenged EPA's disapprovals in federal district court, asserting that EPA did not have the authority to disapprove the HHC in waters in Indian lands. While EPA's position is that the disapprovals were authorized and Maine's existing HHC are not in effect, this determination ensures that EPA has the authority to promulgate the proposed HHC, and that the tribes' sustenance fishing use would be protected, even if Maine's challenge to EPA's disapproval authority were to prevail.

2. Any water in Maine where sustenance fishing is a designated use but such water is determined not to be a "water in Indian lands." [9] EPA notes that there may be one or more waters where the sustenance fishing designated use based on MIA section 6207(4) and (9) extends beyond "waters in Indian lands." See "Scope of Waters" Technical Support Document in the docket for this rulemaking. This determination and corresponding rulemaking apply to any water to which the sustenance fishing designated use based on MIA section 6207(4) and (9) applies that is beyond the scope of "waters in Indian lands."

EPA's determination is not itself a final action, nor part of a final action, at this time. After consideration of comments on the proposed rule, EPA will take final agency action on this rulemaking. It is at that time that any challenge to the determination and/or water quality standards applicable to Maine based on such determination may occur.

IV. Proposed Water Quality Standards

A. Proposed WQS for Waters in Indian Lands in Maine and for Waters Outside of Indian Lands in Maine Where the Sustenance Fishing Designated Use Established by 30 M.R.S. 6207(4) and (9) Applies

1. Human Health Criteria for Toxic Pollutants

a. General Recommended Approach for Deriving HHC. HHC for toxic pollutants are designed to minimize the risk of adverse cancer and non-cancer effects occurring from lifetime exposure to pollutants through the ingestion of drinking water and consumption of fish/shellfish obtained from inland and nearshore waters. EPA's practice is to establish 304(a) HHC for the combined activities of drinking water and consuming fish/shellfish obtained from inland and nearshore waters, and separate HHC for consuming only fish/shellfish originating from inland and nearshore waters. The latter criteria apply in cases where the designated uses of a waterbody include supporting fish/shellfish for human consumption but not drinking water supply sources (*e.g.,* in non-potable estuarine waters). The criteria are based on two types of biological endpoints: (1) Carcinogenicity and (2) systemic toxicity (*i.e.,* all adverse effects other than cancer). EPA takes an integrated approach and considers both cancer and non-cancer effects when deriving HHC. Where sufficient data are available, EPA derives criteria using both carcinogenic and non-carcinogenic toxicity endpoints and recommends the lower value. HHC for carcinogenic effects are typically calculated using the following input parameters: cancer slope factor, excess lifetime cancer risk level, body weight, drinking water intake rate, fish consumption rate(s), and bioaccumulation factor(s). HHC for non-carcinogenic and nonlinear carcinogenic effects are typically calculated using reference dose, relative source contribution (RSC), body weight, drinking water intake rate, fish consumption rate(s) and bioaccumulation factor(s). Each of these inputs is discussed in more detail below, in EPA's 2000 Human Health Methodology (the "2000 Methodology"),[10] and in the 2015 criteria update.[11]

i. Cancer Risk Level. For cancer-causing pollutants where the carcinogenic effects have a linear relationship to exposure, EPA's 304(a) HHC generally assume that carcinogenicity is a "non-threshold phenomenon," which means that there are no "safe" or "no-effect" levels of exposure because even extremely low levels of exposure to most known and suspect carcinogenic compounds are assumed to cause a finite increase in the risk of developing cancer over the course of a lifetime. As a matter of policy, EPA calculates its 304(a) HHC at concentrations corresponding to a 10^{-6} cancer risk level (CRL), meaning that if exposure were to occur as set forth in the 304(a) methodology at the prescribed concentration over the course of one's lifetime, then the risk of developing cancer from the exposure as described would be one in a million on top of the background risk of developing cancer from all other exposures. EPA recommends cancer risk levels of 10^{-6} (one in a million) or 10^{-5} (one in one hundred thousand) for the general population and notes that states and authorized tribes can also choose a more protective risk level, such as 10^{-7} (one in ten million), when deriving HHC.

ii. Cancer Slope Factor and Reference Dose. For noncarcinogenic toxicological effects, EPA uses a chronic-duration oral reference dose (RfD) to derive HHC. An RfD is an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily oral exposure of the human population to a substance that is likely to be without an appreciable risk of deleterious effects during a lifetime. An RfD is typically derived from a laboratory animal dosing study in which a no-observed-adverse-effect level (NOAEL), lowest-observed-adverse-effect level (LOAEL), or benchmark dose can be obtained. Uncertainty factors are applied to reflect the limitations of the data.[12] For carcinogenic toxicological effects, EPA uses an oral cancer slope factor (CSF) to derive HHC. The oral CSF is an upper bound, approximating a 95% confidence limit, on the increased cancer risk from a lifetime oral exposure to a stressor.

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[9] In its February 2015 Decision, EPA concluded that section 6207(4) and (9) of MIA constituted a new or revised water quality standard and approved the provision as a designated use of sustenance fishing applicable to all inland waters of the Southern Tribes' reservations in which populations of fish are or may be found. Accordingly, EPA's approval of MIA section 6207(4) and (9) as a designated use of sustenance fishing applies to all waters where the Southern Tribes have a right to sustenance fish, irrespective of whether such waters are determined to be outside of the scope of their reservation for purposes other than sustenance fishing.

[10] USEPA. 2000. Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health. U.S. Environmental Protection Agency, Office of Water, Washington, DC. EPA–822–B–00–004. *http://www.epa.gov/waterscience/criteria/humanhealth/method/complete.pdf.*

[11] Final Updated Ambient Water Quality Criteria for the Protection of Human Health, 80 FR 36986 (June 29, 2015). See also: USEPA. 2015. Final 2015 Updated National Recommended Human Health Criteria. U.S. Environmental Protection Agency, Office of Water, Washington, DC. *http://water.epa.gov/scitech/swguidance/standards/criteria/current/hhfinal.cfm.*

iii. Exposure Assumptions. In EPA's 2015 criteria update, EPA used a default drinking water intake rate of 2.4 liters per day (L/day) and a default rate of 22.0 g/day for total consumption of fish and shellfish from inland and nearshore waters. Additionally, pollutant-specific bioaccumulation factors (BAFs) or bioconcentration factors (BCFs) were used to relate aqueous pollutant concentrations to predicted pollutant concentrations in the edible portions of ingested species.

EPA's national default drinking water intake rate of 2.4 L/day represents the per capita estimate of combined direct and indirect community water ingestion at the 90th percentile for adults ages 21 and older.[13] EPA's national default FCR of 22.0 g/day represents the 90th percentile consumption rate of fish and shellfish from inland and nearshore waters for the U.S. adult population 21 years of age and older, based on National Health and Nutrient Examination Survey (NHANES) data from 2003 to 2010.[14] EPA calculates HHC using a default body weight of 80.0 kilograms (kg), the average weight of a U.S. adult age 21 and older, based on NHANES data from 1999 to 2006.[15]

Although EPA uses these default values to calculate national 304(a) HHC, EPA's 2000 Methodology notes a preference for the use of local data to calculate HHC (*e.g.*, locally derived FCRs, drinking water intake rates and body weights, and waterbody-specific bioaccumulation rates) over national default values, where data are sufficient to do so.[16] EPA also generally recommends, where sufficient data are available, selecting a FCR that reflects consumption that is not suppressed by concerns about the safety of available fish [17] or fish availability. Deriving HHC using an unsuppressed FCR furthers the restoration goals of the CWA, and ensures protection of human health as pollutant levels decrease, fish habitats are restored, and fish availability increases. While EPA encourages doing so in general, where sustenance fishing is a designated use of the waters (due to, for example, tribal treaty or other federal law that provides for a tribe to fish for its sustenance), in EPA's scientific and policy judgment, selecting a FCR that reasonably represents current unsuppressed fish consumption based on the best currently available information is necessary and appropriate to ensure that such sustenance fishing use is protected. Such FCR must consider suppression and where adequate data are available to clearly demonstrate what that value is for the relevant population, the FCR must reflect that value. If sufficient data regarding unsuppressed fish consumption levels are not readily available, consultation with tribes is important to ensure that all data and information relevant to this issue are considered.

iv. Relative Source Contribution. EPA's 2000 Methodology describes different approaches for addressing water and non-water exposure pathways to derive human health criteria depending on the toxicological endpoint of concern, the toxicological effect (noncarcinogenic or carcinogenic), and whether toxicity is considered a linear or threshold effect. Water sources of exposure include both consuming drinking water and eating fish or shellfish from inland and nearshore waters that have been exposed to pollutants in the water body. For pollutants that exhibit a threshold of exposure before deleterious effects occur, as is the case for noncarcinogens and nonlinear carcinogens, EPA applies a relative source contribution (RSC) to account for other potential human exposures to the pollutant.[18] Other sources of exposure might include, but are not limited to, exposure to a particular pollutant from ocean fish or shellfish consumption (which is not included in the FCR), non-fish food consumption (*e.g.*, consumption of fruits, vegetables, grains, meats, or poultry), dermal exposure, and inhalation exposure.

For substances for which the toxicity endpoint is carcinogenicity based on a linear low-dose extrapolation, only the exposures from drinking water and fish ingestion are reflected in HHC; that is, non-water sources are not explicitly included and no RSC is applied.[19] In these situations, HHC are derived with respect to the *incremental* lifetime cancer risk posed by the presence of a substance in water, rather than an individual's total risk from all sources of exposure. EPA derived a RSC (ranging from 0.2 to 0.8) for each chemical included in the 2015 criteria update, by using the Exposure Decision Tree approach described in the 2000 Methodology.[20]

b. What did EPA disapprove? On February 2, 2015 and March 12, 2015, EPA disapproved Maine's HHC for toxic pollutants for waters in Indian lands because EPA found that they did not meet CWA requirements, *i.e.*, they were not adequate to protect the designated use of sustenance fishing in those waters. EPA reached this conclusion by applying the CWA's requirements that water quality criteria protect designated uses and be based on a sound scientific rationale, in consideration of the purpose of the settlement acts discussed above to preserve the tribes' culture and sustenance practices. EPA determined that in order to protect the function of the waters in Indian lands to preserve the tribes' unique culture and to provide for the safe exercise of their sustenance practices, EPA must interpret Maine's designated use of "fishing" to include sustenance fishing.[21]

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[12] USEPA. 2000. Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health. U.S. Environmental Protection Agency, Office of Water, Washington, DC. EPA–822–B–00–004.

[13] USEPA. 2011. EPA Exposure Factors Handbook. United States Environmental Protection Agency. Washington, DC EPA 600/R–090/052F. *http://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=236252.*

[14] USEPA. 2014. Estimated Fish Consumption Rates for the U.S. Population and Selected Subpopulations (NHANES 2003–2010). United States Environmental Protection Agency, Washington, DC, USA. EPA 820–R–14–002.

[15] USEPA. 2011. EPA Exposure Factors Handbook. United States Environmental Protection Agency. Washington, DC EPA 600/R–090/052F. *http://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=236252.*

[16] USEPA. 2000. Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health. U.S. Environmental Protection Agency, Office of Water, Washington, DC. EPA–822–B–00–004. *http://www.epa.gov/waterscience/criteria/humanhealth/method/complete.pdf.*

[17] USEPA. January 2013. Human Health Ambient Water Quality Criteria and Fish Consumption Rates: Frequently Asked Questions. *http://water.epa.gov/scitech/swguidance/standards/criteria/health/methodology/upload/hhfaqs.pdf.*

[18] USEPA. 2000. Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health. U.S. Environmental Protection Agency, Office of Water, Washington, DC. EPA–822–B–00–004.

[19] USEPA. 2000. Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health. U.S. Environmental Protection Agency, Office of Water, Washington, DC. EPA–822–B–00–004.

[20] USEPA. 2000. Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health. U.S. Environmental Protection Agency, Office of Water, Washington, DC. EPA–822–B–00–004. *http://www.epa.gov/waterscience/criteria/humanhealth/method/complete.pdf.*

[21] In addition, for certain waters in the Southern Tribes' reservations, EPA also approved a sustenance fishing designated use specified in MIA.

EPA's analysis of the settlement acts also led EPA to consider the tribes to be the general target population in their waters. Accordingly, EPA applied the 2000 Methodology's recommendations on exposure and cancer risk for the general target population in its evaluation of whether Maine's HHC protect the sustenance fishing use in waters in Indian lands. In other words, EPA considered whether the FCR reflected, as accurately as possible, the tribes' sustenance level FCR, and whether the CRL was protective of the sustenance fishers as a general population rather than as a highly exposed subpopulation. As explained in the February 2, 2015 disapproval decision, EPA concluded that the FCRs on which Maine's HHC are based[22] do not result in criteria that ensure protection of the sustenance designated use for waters in Indian lands. This is because Maine's FCRs do not reflect the best available information regarding the tribes' sustenance level of consumption unsuppressed by pollutant concerns, which EPA determined in its scientific and policy judgment was necessary and appropriate in developing criteria to protect the sustenance fishing designated use of waters in Indian lands as required by the CWA. EPA also concluded, as explained in the March 16, 2015 decision, that Maine's 10^{-4} CRL for arsenic does not adequately protect the general target population of tribal sustenance fishers in waters in Indian lands. (EPA approved a separate provision in Maine's regulations that requires that HHC be based on a CRL of 10^{-6}, finding that it is consistent with EPA's 2000 Methodology and adequately protects tribal sustenance fishers as a general target population.)

c. Criteria for Which EPA is Reserving Action. Although EPA disapproved Maine's criteria for arsenic, dioxin, and thallium for waters in Indian lands, there is some uncertainty regarding aspects of the science upon which EPA's 304(a) HHC are based such that EPA is deferring proposal of these criteria at this time. EPA did not update the 304(a) HHC for these three pollutants in 2015. For thallium, EPA's IRIS database does not currently contain a quantitative RfD assessment.[23] For dioxin, IRIS does not currently contain a quantitative carcinogenicity assessment.[24]

While EPA disapproved Maine's arsenic criteria for waters in Indian lands because the cancer risk level and fish consumption rate together did not provide a sufficient level of protection of the sustenance fishing use, EPA recognizes that there is substantial uncertainty surrounding the toxicological assessment of arsenic with respect to human health effects. EPA's current plan for addressing these issues is described in the *Assessment Development Plan for the Integrated Risk Information System (IRIS) Toxicological Review of Inorganic Arsenic* (EPA/630/R–14/101 November 2015). During a similar period of uncertainty surrounding the toxicological assessment of arsenic in 2000, EPA similarly did not promulgate arsenic HHC for the State of California.[25]

Without specific numeric criteria in place for arsenic, thallium, and dioxin in waters in Indian lands, Maine is in a position to rely on the latest science and policy as it becomes available to interpret the existing narrative water quality criteria for waters in Indian lands. For example, permitting authorities in Maine should rely on existing narrative water quality criteria to establish effluent limitations as necessary for arsenic, thallium, and dioxin. Federal regulations at 40 CFR 122.44(d)(1)(vi) describe options available to the state for this purpose. Unless Maine submits and EPA approves these criteria, EPA plans to propose criteria for thallium, dioxin, and arsenic for waters in Indian lands and any waters that are covered by the determination set forth in section III once it has updated the 304(a) HHC.

d. What is EPA Proposing? EPA proposes HHC for 96[26] of the toxic pollutants applicable to waters in Indian lands that EPA disapproved. Table 3 provides the criteria proposed for each pollutant as well as the HHC inputs used to derive each one, as discussed below. These proposed criteria also apply to any waters that are covered by the determination set forth in section III.

i. Maine-Specific HHC Inputs—1. Fish Consumption Rate. In EPA's February 2, 2015 decision and in this proposal, EPA treats the tribes as the target general population for waters in Indian lands. EPA proposes this approach because EPA has determined that sustenance fishing is the applicable designated use for waters in Indian lands based on EPA's interpretation of Maine's designated use of "fishing," and, for fresh waters in the Southern Tribes' reservations, also based on EPA's approval of section 6207(4) and (9) of MIA as a sustenance fishing designated use. Therefore, the criteria must protect that use. As discussed at length in EPA's February 2015 decision on Maine's WQS, these Indian lands and their associated waters have been specifically set aside for the Maine tribes to exercise their sustenance practices. These waters are at the core of the resource base provided for under the settlement acts to support these tribes as sustenance cultures.[27] Having found that sustenance fishing is a designated use in the waters in Indian lands, it is reasonable for EPA to target tribal sustenance fishers as the general population for the purpose of establishing criteria to protect that use. The same analysis applies to waters outside of Indian lands where the sustenance fishing designated use applies.

EPA derived the HHC to protect the sustenance fishing use based on a total fish consumption rate (FCR) of 286 g/day. EPA selected this consumption rate based on information contained in an historical/anthropological study, entitled the Wabanaki Cultural Lifeways

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[22] Maine's FCR for all toxic HHC except arsenic is 32.4 g/day, and for arsenic is 138 g/day.

[23] *http://cfpub.epa.gov/ncea/iris/index.cfm?fuseaction=iris.showQuickView&substance_nmbr=1012.*

[24] *http://cfpub.epa.gov/ncea/iris/index.cfm?fuseaction=iris.showQuickView&substance_nmbr=1024.*

[25] **Federal Register** Vol. 65, No. 97, Thursday, May 18, 2000, Rules and Regulations.

[26] After further consideration, by letter of January 19, 2016, EPA withdrew its February 2, 2015 disapprovals of Maine's HHC for six pollutants (copper, asbestos, barium, iron, manganese and nitrates) and instead approved them. EPA concluded that those criteria were not calculated using a fish consumption rate, and therefore the basis for EPA's disapprovals of the HHC in the February 2, 2015 decision letter did not apply. EPA approved them as being consistent with EPA's recommended 304(a) criteria. In addition, EPA has withdrawn its February 2, 2015 disapprovals of Maine's HHC for the following HHC and instead approved them: (1) For the consumption of water plus organisms for 1,2-dichloropropane, 1,4-dichlorobenzene, dichlorobromomethane, chlorodibromomethane, chrysene, methylene chloride, chlorophenoxy herbicide (2, 4, 5–TP), chlorophenoxy herbicide (2,4–D), and N-nitrosopyrrolidine; (2) for the consumption of organisms alone for acrolein and gamma-BHC (Lindane); and (3) for both the consumption of water plus organisms and for the consumption of organisms alone for 1,2-dichloroethane, acrylonitrile, benzidine, bis(chloromethyl) ether, chloroform, methyl bromide, and tetrachloroethylene. EPA calculated the HHC for these pollutants using the best science reflected in the 2015 criteria updates (which were finalized after the disapprovals), along with a FCR of 286 to protect the sustenance fishing use, and concluded that the resulting HHC were either the same or less stringent than Maine's HHC that EPA had disapproved. Accordingly, EPA withdrew the disapprovals and approved these HHC based on their being adequate to protect the sustenance fishing use.

[27] EPA recognizes that the general public has the right to access some tribal waters and to fish there subject to conditions that do not discriminate between tribal members and non-members. *See* MIA § 6207(1).

Exposure Scenario[28] ("Wabanaki Study"), which was completed in 2009. EPA also consulted with the tribes in Maine about the Wabanaki Study and their sustenance fishing uses of the waters in Indian lands. There has been no contemporary local survey of current fish consumption, adjusted to account for suppression, that documents fish consumption rates for sustenance fishing in the waters in Indian lands in Maine. In the absence of such information, EPA concluded that the Wabanaki Study contains the best currently available information for the purpose of deriving an unsuppressed FCR for HHC adequate to protect sustenance fishing for such waters.

The peer-reviewed Wabanaki Study was produced under a Direct Implementation Tribal Cooperative Agreement (DITCA) awarded by EPA to the Aroostook Band of Micmac Indians on behalf of all of the Maine tribes. The purpose of the Study was to use available anthropological and ecological data to develop a description of Maine tribes' traditional cultural uses of natural resources, and to present the information in a format that could be used by EPA to evaluate whether or not tribal uses are protected when EPA reviews or develops WQS in Indian lands in Maine. It is relevant to contemporary water quality because another purpose of the Study "is to describe the lifestyle that was universal when resources were in better condition and that some tribal members practice today (and many more that are waiting to resume once restoration goals and protective standards are in place)." It provides a numerical representation of the environmental contact, diet, and exposure pathways of the traditional tribal lifestyle, including the use of water resources for food, medicine, cultural and traditional practices, and recreation. The report used anthropological and ecological data to identify major activities that contribute to environmental exposure and then to develop exposure factors related to traditional diet, drinking water, soil and sediment ingestion, inhalation rate and dermal exposure. Credible ethno-historical, ecological, nutritional, archaeological, and biomedical literature was reviewed through the lens of natural resource use and activities necessary to survive in the Maine environment and support tribal traditions. Along with single, best professional judgment estimates for direct exposures (inhalation, soil ingestion, water ingestion) as a reasonable representation (central tendency) of the traditional cultural lifeways, the Wabanaki Study provides an estimated range of diets that reflect three major habitat types.

In developing the dietary component of the exposure scenario, the Wabanaki Study authors assembled information about general foraging, seasonal patterns, dietary breadth, abundance, and food storage. From these they evaluated the relative proportion of major food groups, including fish, as well as nutritional information, total calories and quantities of foods. This resulted in an estimate of a nutritionally complete diet for the area east of the Kennebec River, which is the area most heavily used by tribal members today and where farming is marginal due to climate. With regard to the consumption of fish, the Wabanaki Study identifies three traditional lifestyle models, each with its own diet:

1. Permanent inland residence on a river with anadromous fish runs ("inland anadromous"),
2. Permanent inland residence with resident fish only ("inland non-anadromous"), and
3. Permanent coastal residence ("coastal").

The study provides estimates of average adult consumption of aquatic resources, game, fowl, and plant-based foods for each lifestyle model based on a 2,000 kcal/day diet. Aquatic resources were divided into two categories: "resident fish and other aquatic resources" and "anadromous and marine fish and shellfish." Table 2 summarizes the consumption of aquatic resources for each lifestyle model.

TABLE 2—CONSUMPTION OF AQUATIC RESOURCES BY LIFESTYLE MODEL[29]

Lifestyle model	Resident fish & other aquatic resources (g/day)	Anadromous & marine fish, shellfish (g/day)[30]	Total
Inland Anadromous	114	400	514
Inland Non-anadromous	286	0	286
Coastal	57	457	514

The Wabanaki Study provides a range of consumption rates specifically for Maine Indians using natural resources for sustenance living and reduces the uncertainties associated with a lack of knowledge about tribal exposure in Maine Indian waters.

In addition to evaluating the Wabanaki Study, EPA consulted with the four Maine tribes to gather additional information about current practices, present day circumstances related to the species composition of available fish, and any other information that the tribes thought was relevant to EPA's decision making. EPA also considered the Penobscot Nation's use of a FCR of 286 g/day in developing HHC in its 2014 tribal WQS. In its September 23, 2014 responses to comments on the final WQS, the Nation explained that it chose the inland non-anadromous total FCR of 286 g/day because, although the Penobscot lands are in areas that would have historically supported an inland anadromous diet (with a total FCR of 514 g/day), the contemporary populations of anadromous species in Penobscot waters are currently too low to be harvested in significant quantities. The Nation's representative reiterated this rationale in the September 9, 2015 tribal consultation with EPA. The representative of the Aroostook Band of Micmacs also stated during the consultation that the Wabanki Study's inland non-anadromous lifestyle diet reflects the current Micmac diet, although the tribe has a goal of the return and consumption of anadromous fish.

EPA proposes to use a FCR of 286 g/day to represent present day sustenance-level fish consumption, unsuppressed by pollution concerns, in the waters covered by this action. This value reflects the Wabanaki Study's 286 g/day FCR for the inland non-anadromous lifestyle, which relied on resident fish species only. For tribes that followed the inland anadromous lifestyle, 286 g/day represents all of the resident species fish consumption rate (114 g/day) as well as approximately 43% of the 400 g/day consumption rate for anadromous and other non-resident species (172 g/day). For tribes that followed the coastal lifestyle, 286 g/day represents all of the resident species fish consumption rate (57 g/day) as well as approximately 50% of the 457 g/day consumption rate for anadromous and other non-resident species (229 g/day). It is reasonable to assume that the inland anadromous and coastal lifestyle tribes would have shifted a substantial percentage of the sustenance fishing diet from the formerly widely available but now less available anadromous species (such as salmon) or protected marine mammals to resident fish species, including introduced freshwater species, corresponding to the FCR for the inland non-anadromous lifestyle. That assumption is consistent with the Penobscot Nation's approach to deriving a current, unsuppressed FCR to protect sustenance fishing.

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[28] Harper, B., Ranco, D., et al. 2009. Wabanaki Traditional Cultural Lifeways Exposure Scenario. *http://www.epa.gov/sites/production/files/2015-08/documents/ditca.pdf.*

[29] Id., pp. 61–66.

[30] Includes marine mammals for coastal lifestyle model only.

Since the Wabanaki Study presented estimates of the total amount of fish and aquatic organisms consumed and not the amount consumed of each trophic level, for the purpose of developing HHC for the Maine tribes, EPA assumes that Maine tribes consume the same relative proportion of fish and aquatic organisms from the different trophic levels 2 through 4 as the general U.S. population, as identified in the 2015 criteria update (*i.e.*, 36%, 40%, and 24% of the total amount consumed for trophic levels 2, 3, and 4, respectively). Accordingly, EPA proposes to use trophic-specific fish consumption rates of 103 g/day (trophic level 2), 114 g/day (trophic level 3), and 68.6 g/day (trophic level 4) for the HHC for those compounds which the 2015 criteria update included trophic level specific BAFs.

2. Pollutant Bioaccumulation and Bioconcentration Factors. In order to prevent harmful exposures to waterborne chemicals through the consumption of contaminated fish and shellfish, HHC must address the process of chemical bioaccumulation in aquatic organisms. For the 2015 criteria update, EPA estimated chemical-specific BAFs for three different trophic levels of fish (levels 2 through 4), using a framework for deriving national BAFs described in EPA's 2000 Methodology.[31] EPA proposes to use those BAFs to calculate the proposed HHC.

Where EPA did not update BAFs for certain pollutants in the 2015 criteria update, and for cyanide, EPA proposes HHC using the BCFs (which are not trophic-level specific) that the Agency used the last time it updated its 304(a) HHC for those pollutants as the best available scientific information.

3. Cancer Risk Level. Maine's water quality regulations, at Maine's Department of Environmental Protection (DEP) Rule Chapter 584 section 4, specify that water quality criteria for carcinogens must be based on a CRL of 10^{-6} (except for a 10^{-4} CRL for arsenic, which EPA disapproved). On February 2, 2015, EPA approved the 10^{-6} CRL for waters in Indian lands, since it is consistent with the range of CRLs that EPA considers to be appropriate for the general population. This is also the risk level that EPA uses when publishing its 304(a) HHC and when promulgating federal criteria.[32] As explained above, EPA considers the tribes to be the general target population for waters in Indian lands. For these reasons, EPA proposes to use a 10^{-6} CRL in its criteria for carcinogens for waters covered by this action.

4. Relative Source Contribution. EPA recommends using a RSC for non-carcinogens and nonlinear carcinogens to account for sources of exposure other than drinking water and consumption of inland and nearshore fish and shellfish (see 2015 criteria update, section II.B.d).[33] In 2015, after evaluating information on chemical uses, properties, occurrences, releases to the environment and regulatory restrictions, EPA developed chemical-specific RSCs for non-carcinogens and nonlinear carcinogens ranging from 0.2 (20%) to 0.8 (80%) following the Exposure Decision Tree approach described in EPA's 2000 Methodology and used them in the 2015 criteria updates.[34] [35] For these pollutants, EPA proposes to use the same RSCs to derive the HHC. For pollutants where EPA did not update the 304(a) HHC in 2015, EPA proposes to use a default RSC of 0.2 to derive HHC following the Exposure Decision Tree approach described in EPA's 2000 Methodology; a RSC of 0.2 is used as a default RSC when EPA has not developed a pollutant-specific RSC based on exposure/occurrence data. In the case of antimony (for which EPA did not update the 304(a) HHC in 2015), EPA proposes to use an RSC of 0.4 consistent with the RSC value used the last time the Agency updated this criterion.[36]

5. Body Weight. EPA proposes to calculate HHC using a body weight of 80.0 kg, which represents the average weight of a U.S. adult. In 2015, EPA updated its recommended adult body weight to 80.0 kg based on national survey data (see 2015 criteria update, section II.B.c).[37] EPA is not aware of any local body weight data applicable to Maine tribes that would suggest a different value.

6. Drinking Water Intake. EPA proposes to calculate HHC using a drinking water intake rate of 2.4 L/day. In 2015, EPA updated its national default drinking water intake rate in the 304(a) HHC to 2.4 L/day (see 2015 criteria update, section II.B.c).[38] This rate is based on the national survey data and represents the per capita estimate of combined direct and indirect community water ingestion at the 90th percentile for adults ages 21 and older. EPA is not aware of any local data applicable to Maine tribes that suggest a different rate.

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[31] USEPA. 2000. Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health. U.S. Environmental Protection Agency, Office of Water, Washington, DC. EPA–822–B–00–004. *http://www.epa.gov/waterscience/criteria/humanhealth/method/complete.pdf.*

[32] USEPA. 2000. Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health. US Environmental Protection Agency. pp. 2–6.

[33] Final Updated Ambient Water Quality Criteria for the Protection of Human Health, (80 FR 36986, June 29, 2015). See also: USEPA. 2015. Final 2015 Updated National Recommended Human Health Criteria. U.S. Environmental Protection Agency, Office of Water, Washington, DC. *http://water.epa.gov/scitech/swguidance/standards/criteria/current/hhfinal.cfm.*

[34] USEPA. 2000. Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health. U.S. Environmental Protection Agency, Office of Water, Washington, DC. EPA–822–B–00–004. *http://www.epa.gov/waterscience/criteria/humanhealth/method/complete.pdf.*

[35] Final Updated Ambient Water Quality Criteria for the Protection of Human Health, (80 FR 36986, June 29, 2015). See also: USEPA. 2015. Final 2015 Updated National Recommended Human Health Criteria. U.S. Environmental Protection Agency, Office of Water, Washington, DC. *http://water.epa.gov/scitech/swguidance/standards/criteria/current/hhfinal.cfm.*

[36] USEPA. 2002. National Recommended Water Quality Criteria: 2002 Human Health Criteria Calculation Matrix. EPA–822–R–02–012. U.S. Environmental Protection Agency, Office of Water, Washington, DC. *http://water.epa.gov/scitech/swguidance/standards/upload/2002_12_30_criteria_wqctable_hh_calc_matrix.pdf.*

[37] Final Updated Ambient Water Quality Criteria for the Protection of Human Health, (80 FR 36986, June 29, 2015). See also: USEPA. 2015. Final 2015 Updated National Recommended Human Health Criteria. U.S. Environmental Protection Agency, Office of Water, Washington, DC. *http://water.epa.gov/scitech/swguidance/standards/criteria/current/hhfinal.cfm.*

[38] Final Updated Ambient Water Quality Criteria for the Protection of Human Health, (80 FR 36986, June 29, 2015). See also: USEPA. 2015. Final 2015 Updated National Recommended Human Health Criteria. U.S. Environmental Protection Agency, Office of Water, Washington, DC. *http://water.epa.gov/scitech/swguidance/standards/criteria/current/hhfinal.cfm.*

7. Pollutant-Specific Reference Doses and Cancer Slope Factors. As part of EPA's 2015 criteria update, EPA conducted a systematic search of eight peer-reviewed, publicly available sources to obtain the most current toxicity values for each pollutant (RfDs for non-carcinogenic effects and CSFs for carcinogenic effects).[39] EPA proposes to calculate HHC using the same toxicity values that EPA used in its 2015 criteria update, to ensure that the resulting criteria are based on a sound scientific rationale. Where EPA did not update criteria for certain pollutants in 2015, EPA proposes to use the toxicity values that the Agency used the last time it updated its 304(a) HHC for those pollutants.

ii. Proposed Criteria. EPA proposes HHC for 96 different pollutants (93 organism-only criteria, 88 water-plus-organism criteria) to protect the sustenance fishing designated use in the waters covered by this action (see Table 3). In accordance with Maine DEP Rule Chapter 584, paragraph 1, the proposed "Water & Organisms" criteria would apply to all waters except for marine waters, where the proposed "Organisms Only" criteria would apply.

All of the proposed HHC criteria are proposed in units of micrograms per liter (µg/L) except for methylmercury,[40] which is expressed as mg/kg in the edible portion of fish.

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[39] Final Updated Ambient Water Quality Criteria for the Protection of Human Health, (80 FR 36986, June 29, 2015). See also: USEPA. 2015. Final 2015 Updated National Recommended Human Health Criteria. U.S. Environmental Protection Agency, Office of Water, Washington, DC. *http://water.epa.gov/scitech/swguidance/standards/criteria/current/hhfinal.cfm.*

[40] EPA proposes a fish tissue-based methylmercury criterion rather than a fish tissue-based mercury criterion (which EPA disapproved in Indian waters) because methylmercury is the form of mercury found in fish and to which humans are exposed through eating fish. Human exposure to other forms of mercury is typically not associated with the aquatic environment.

TABLE 3 – PROPOSED HHC AND KEY PARAMETERS USED IN THEIR DERIVATION

	Chemical Name	CAS Number	Cancer Slope Factor, CSF (per mg/kg·d)	Relative Source Contribution RSC (-)	Reference Dose, RfD (mg/kg·d)	Bioaccumulation Factor for Trophic Level 2 (L/kg tissue)	Bioaccumulation Factor for Trophic Level 3 (L/kg tissue)	Bioaccumulation Factor for Trophic Level 4 (L/kg tissue)	Bioconcentration Factor (L/kg tissue)^c	Water & Organisms (µg/L)	Organisms Only (µg/L)
1	1,1,2,2-Tetrachloroethane	79-34-5	0.2	-	-	5.7	7.4	8.4	-	0.09	0.2
2	1,1,2-Trichloroethane	79-00-5	0.057	-	-	6.0	7.8	8.9	-	0.31	0.66
3	1,1-Dichloroethylene	75-35-4	-	0.20	0.05	2.0	2.4	2.6	-	300	1000
4	1,2,4,5-Tetrachlorobenzene	95-94-3	-	0.20	0.0003	17,000	2,900	1,500	-	0.002	0.002
5	1,2,4-Trichlorobenzene	120-82-1	0.029	-	-	2,800	1,500	430	-	0.0056	0.0056
6	1,2-Dichlorobenzene	95-50-1	-	0.20	0.3	52	71	82	-	200	300
7	1,2-Dichloropropane	78-87-5	0.036	-	-	2.9	3.5	3.9	-	-	2.3
8	1,2-Diphenylhydrazine	122-66-7	0.8	-	-	18	24	27	-	0.01	0.02
9	1,2-Trans-Dichloroethylene	156-60-5	-	0.20	0.02	3.3	4.2	4.7	-	90	300
10	1,3-Dichlorobenzene	541-73-1	-	0.20	0.002	31	120	190	-	1	1
11	1,3-Dichloropropene	542-75-6	0.122	-	-	2.3	2.7	3.0	-	0.21	0.87
12	1,4-Dichlorobenzene	106-46-7	-	0.20	0.07	28	66	84	-	-	70
13	2,4,5-Trichlorophenol	95-95-4	-	0.20	0.1	100	140	160	-	40	40
14	2,4,6-Trichlorophenol	88-06-2	0.011	-	-	94	130	150	-	0.20	0.21
15	2,4-Dichlorophenol	120-83-2	-	0.20	0.003	31	42	48	-	4	4
16	2,4-Dimethylphenol	105-67-9	-	0.20	0.02	4.8	6.2	7.0	-	80	200
17	2,4-Dinitrophenol	51-28-5	-	0.20	0.002	4.4^a	4.4^a	4.4^a	-	9	30
18	2,4-Dinitrotoluene	121-14-2	0.667	-	-	2.8	3.5	3.9	-	0.036	0.13
19	2-Chloronaphthalene	91-58-7	-	0.80	0.08	150	210	240	-	90	90
20	2-Chlorophenol	95-57-8	-	0.20	0.005	3.8	4.8	5.4	-	20	60
21	2-Methyl-4,6-Dinitrophenol	534-52-1	-	0.20	0.0003	6.8	8.9	10	-	1	2
22	3,3'-Dichlorobenzidine	91-94-1	0.45	-	-	44	60	69	-	0.0096	0.011

TABLE 3 – PROPOSED HHC AND KEY PARAMETERS USED IN THEIR DERIVATION

	Chemical Name	CAS Number	Cancer Slope Factor, CSF (per mg/kg·d)	Relative Source Contribution RSC (-)	Reference Dose, RfD (mg/kg·d)	Bioaccumulation Factor for Trophic Level 2 (L/kg tissue)	Bioaccumulation Factor for Trophic Level 3 (L/kg tissue)	Bioaccumulation Factor for Trophic Level 4 (L/kg tissue)	Bioconcentration Factor (L/kg tissue)[c]	Water & Organisms (µg/L)	Organisms Only (µg/L)
23	4,4'-DDD	72-54-8	0.24	-	-	33,000	140,000	240,000	-	9.3E-06	9.3E-06
24	4,4'-DDE	72-55-9	0.167	-	-	270,000	1,100,000	3,100,000	-	1.3E-06	1.3E-06
25	4,4'-DDT	50-29-3	0.34	-	-	35,000	240,000	1,100,000	-	2.2E-06	2.2E-06
26	Acenaphthene	83-32-9	-	0.20	0.06	510[a]	510[a]	510[a]	-	6	7
27	Acrolein	107-02-8	-	0.20	0.0005	1.0	1.0	1.0	-	3	-
28	Aldrin	309-00-2	17	-	-	18,000	310,000	650,000	-	5.8E-08	5.8E-08
29	alpha-BHC	319-84-6	6.3	-	-	1,700	1,400	1,500	-	2.9E-05	2.9E-05
30	alpha-Endosulfan	959-98-8	-	0.20	0.006	130	180	200	-	2	2
31	Anthracene	120-12-7	-	0.20	0.3	610[a]	610[a]	610[a]	-	30	30
32	Antimony	7440-36-0	-	0.40	0.0004	-	-	-	1	4.8	45
33	Benzene	71-43-2	[3]0.055	-	-	3.6	4.5	5.0	-	0.40	1.2
34	Benzo (a) Anthracene	56-55-3	0.73	-	-	3,900[a]	3,900[a]	3,900[a]	-	9.8E-05	9.8E-05
35	Benzo (a) Pyrene	50-32-8	7.3	-	-	3,900[a]	3,900[a]	3,900[a]	-	9.8E-06	9.8E-06
36	Benzo (b) Fluoranthene	205-99-2	0.73	-	-	3,900[a]	3,900[a]	3,900[a]	-	9.8E-05	9.8E-05
37	Benzo (k) Fluoranthene	207-08-9	0.073	-	-	3,900[a]	3,900[a]	3,900[a]	-	0.00098	0.00098
38	beta-BHC	319-85-7	1.8	-	-	110	160	180	-	0.0010	0.0011
39	beta-Endosulfan	33213-65-9	-	0.20	0.006	80	110	130	-	3	3
40	Bis(2-Chloro-1-Methylethyl) Ether	108-60-1	-	0.20	0.04	6.7	8.8	10	-	100	300
41	Bis(2-Chloroethyl) Ether	111-44-4	1.1	-	-	1.4	1.6	1.7	-	0.026	0.16
42	Bis(2-Ethylhexyl) Phthalate	117-81-7	0.014	-	-	710[a]	710[a]	710[a]	-	0.028	0.028
43	Bromoform	75-25-2	0.0045	-	-	5.8	7.5	8.5	-	4.0	8.7
44	Butylbenzyl Phthalate	85-68-7	0.0019	-	-	19,000[a]	19,000[a]	19,000[a]	-	0.0077	0.0077
45	Carbon Tetrachloride	56-23-5	0.07	-	-	9.3	12	14	-	0.2	0.3

TABLE 3 – PROPOSED HHC AND KEY PARAMETERS USED IN THEIR DERIVATION

	Chemical Name	CAS Number	Cancer Slope Factor, CSF (per mg/kg·d)	Relative Source Contribution RSC (-)	Reference Dose, RfD (mg/kg·d)	Bioaccumulation Factor for Trophic Level 2 (L/kg tissue)	Bioaccumulation Factor for Trophic Level 3 (L/kg tissue)	Bioaccumulation Factor for Trophic Level 4 (L/kg tissue)	Bioconcentration Factor (L/kg tissue)[b]	Water & Organisms (µg/L)	Organisms Only (µg/L)
46	Chlordane	57-74-9	0.35	-	-	5,300	44,000	60,000	-	2.4E-05	2.4E-05
47	Chlorobenzene	108-90-7	-	0.20	0.02	14	19	22	-	40	60
48	Chlorodibromomethane	124-48-1	0.040	-	-	3.7	4.8	5.3	-	-	1.5
49	Chrysene	218-01-9	0.0073	-	-	3,900[a]	3,900[a]	3,900[a]	-	-	0.0098
50	Cyanide	57-12-5	-	0.20	0.0006	-	-	-	1	4	30
51	Dibenzo (a,h) Anthracene	53-70-3	7.3	-	-	3,900[a]	3,900[a]	3,900[a]	-	9.8E-06	9.8E-06
52	Dichlorobromomethane	75-27-4	0.034	-	-	3.4	4.3	4.8	-	-	2
53	Dieldrin	60-57-1	16	-	-	14,000	210,000	410,000	-	9.3E-08	9.3E-08
54	Diethyl Phthalate	84-66-2	-	0.20	0.8	920[a]	920[a]	920[a]	-	50	50
55	Dimethyl Phthalate	131-11-3	-	0.20	10	4,000[a]	4,000[a]	4,000[a]	-	100	100
56	Di-n-Butyl Phthalate	84-74-2	-	0.20	0.1	2,900[a]	2,900[a]	2,900[a]	-	2	2
57	Dinitrophenols	25550-58-7	-	0.20	0.002	-	-	-	1.51	10	70
58	Endosulfan Sulfate	1031-07-8	-	0.20	0.006	88	120	140	-	3	3
59	Endrin	72-20-8	-	0.80	0.0003	4,600	36,000	46,000	-	0.002	0.002
60	Endrin Aldehyde	7421-93-4	-	0.80	0.0003	440	920	850	-	0.09	0.09
61	Ethylbenzene	100-41-4	-	0.20	0.022	100	140	160	-	8.9	9.5
62	Fluoranthene	206-44-0	-	0.20	0.04	1,500[a]	1,500[a]	1,500[a]	-	1	1
63	Fluorene	86-73-7	-	0.20	0.04	230	450	710	-	5	5
64	gamma-BHC (Lindane)	58-89-9	-	0.50	0.0047	1,200	2,400	2,500	-	0.33	-
65	Heptachlor	76-44-8	4.1	-	-	12,000	180,000	330,000	-	4.4E-07	4.4E-07
66	Heptachlor Epoxide	1024-57-3	5.5	-	-	4,000	28,000	35,000	-	2.4E-06	2.4E-06
67	Hexachlorobenzene	118-74-1	1.02	-	-	18,000	46,000	90,000	-	5.9E-06	5.9E-06
68	Hexachlorobutadiene	87-68-3	0.04	-	-	23,000	2,800	1,100	-	0.0007	0.0007

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69	Hexachlorocyclohexane-Technical	608-73-1	1.8	-	-	160	220	250	-	0.00073	0.00076
70	Hexachlorocyclopentadiene	77-47-4	-	0.20	0.006	620	1,500	1,300	-	0.3	0.3
71	Hexachloroethane	67-72-1	0.04	-	-	1,200	280	600	-	0.01	0.01
72	Indeno (1,2,3-cd) Pyrene	193-39-5	0.73	-	-	3,900[a]	3,900[e]	3,900[a]	-	9.8E-05	9.8E-05
73	Isophorone	78-59-1	0.00095	-	-	1.9	2.2	2.4	-	28	140
74	Methoxychlor	72-43-5	-	0.80	2.E-05	1,400	4,800	4,400	-	0.001	-
75	Methylene Chloride	75-09-2	0.002	-	-	1.4	1.5	1.6	-	-	90
76	Methylmercury	22967-92-6	-	2.70E-05	0.0001	-	-	-	-	-	[c]0.02 (mg/kg)
77	Nickel	7440-02-0	-	0.20	0.02	-	-	-	47	20	24
78	Nitrobenzene	98-95-3	-	0.20	0.002	2.3	2.8	3.1	-	10	40
79	Nitrosamines	-	43.46	-	-	-	-	-	0.20	0.0007	0.0322
80	N-Nitrosodibutylamine	924-16-3	5.43	-	-	-	-	-	3.38	0.0044	0.015
81	N-Nitrosodiethylamine	55-18-5	43.46	-	-	-	-	-	0.20	0.0007	0.0322
82	N-Nitrosodimethylamine	62-75-9	51	-	-	-	-	-	0.026	0.00065	0.21
83	N-Nitrosodi-n-propylamine	621-64-7	7.0	-	-	-	-	-	1.13	0.0042	0.035
84	N-Nitrosodiphenylamine	86-30-6	0.0049	-	-	-	-	-	136	0.40	0.42
85	N-Nitrosopyrrolidine	930-55-2	2.13	-	-	-	-	-	0.055	-	2.4
86	Pentachlorobenzene	608-93-5	-	0.20	0.0008	3,500	4,500	10,000	-	0.008	0.008
87	Pentachlorophenol	87-86-5	0.4	-	-	44	290	520	-	0.003	0.003
88	Phenol	108-95-2	-	0.20	0.6	1.5	1.7	1.9	-	3,000	20,000

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89	Polychlorinated Biphenyls (PCBs)	1336-36-3	2	-	-	-	-	-	31,200	[d]4.5E-06	[d]4.5E-06
90	Pyrene	129-00-0	-	0.20	0.03	860[a]	860[a]	860[a]	-	2	2
91	Selenium	7782-49-2	-	0.20	0.005	-	-	-	4.8	21	58
92	Toluene	108-88-3	-	0.20	0.0097	11	15	17	-	24	39
93	Toxaphene	8001-35-2	1.1	-	-	1,700	6,600	6,300	-	5.3E-05	5.3E-05
94	Trichloroethylene	79-01-6	0.05	-	-	8.7	12	13	-	0.3	0.5
95	Vinyl Chloride	75-01-4	1.5	-	-	1.4	1.6	1.7	-	0.019	0.12
96	Zinc	7440-66-6	-	0.20	0.3	-	-	-	47	300	360

[a] This bioaccumulation factor was estimated from laboratory-measured bioconcentration factors; EPA multiplied this bioaccumulation factor by the overall fish consumption rate of 286 g/d to calculate the human health criteria.

[b] EPA's 304(a) HHC for benzene use a CSF range of 0.015 to 0.055 per mg/kg-day. EPA proposes to use the higher end of the CSF range (0.055 per mg/kg-day) to derive the proposed benzene criteria.

[c] This criterion is expressed as the fish tissue concentration of methylmercury (mg methylmercury/kg fish) and applies equally to fresh and marine waters. See Water Quality Criterion for the Protection of Human Health: Methylmercury (EPA-823-R-01-001, January 3, 2001) for how this value is calculated using the criterion equation in EPA's 2000 Methodology rearranged to solve for a protective concentration in fish tissue rather than in water.

[d] This criterion applies to total PCBs (e.g., the sum of all congener or isomer or homolog or Aroclor analyses).

[e] EPA multiplied this bioconcentration factor by the overall fish consumption rate of 286 g/d to calculate the human health criteria.

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B. Proposed WQS for Waters in Indian Lands

1. Bacteria Criteria

a. What did EPA disapprove? On March 16, 2015, EPA disapproved Maine's 1985 bacteria criteria for the protection of the designated use of "recreation in and on the water" (recreational criteria), as revised in 2005 and 2008, for Class B, C, GPA, SB and SC waters in Indian lands. This designated use and these criteria are set forth in 38 M.R.S. 465(3.B) and (4.B), 465–A(1.B), and 465–B(2.B) and (3.B), respectively. EPA's disapproval of Maine's recreational criteria for waters in Indian lands was based on a review of whether the criteria, as a whole, protect the applicable designated use. Because Maine's recreational criteria apply only to fecal sources of human and domestic origin and do not include an explicit duration and frequency of exceedance, EPA concluded that Maine's recreational criteria are not fully protective of the recreation designated use in waters in Indian lands.

Maine's recreational bacteria criteria for Class B, C, GPA, SB and SC waters include only fecal sources of "human and domestic origin" and fail to include naturally occurring sources. In the case of bacteria, pathogens that pose human health risks can come from naturally occurring sources such as wildlife as well as from human and domestic sources. Therefore, a potential human health risk from recreational exposure to bacteria exists in wildlife-impacted waters (2012 Recreational Water Quality Criteria, section 3.5.1–2). In addition, EPA published new recommended 304(a) recreational criteria in 2012, which include two numeric thresholds (geometric mean and statistical threshold value, or STV), an averaging duration, and a maximum frequency of exceedance. Maine's recreational criteria do not include an explicit duration and frequency of exceedance or an STV, all of which EPA finds are necessary to protect designated uses.

On June 5, 2015, EPA disapproved the narrative bacteria criteria for Class AA, A and SA waters in Indian lands for the protection of recreation uses and, in the case of SA waters, also for shellfishing uses. These criteria are set forth in 38 M.R.S. 465(1.B and 2.B) and 465–B(1.B), respectively. These criteria specify that the bacteria content of these waters shall be "as naturally occurs." Although the intent of these criteria is to reflect conditions unaffected by human activity, in the case of bacteria, pathogens that pose human health risks from recreational exposure or shellfish consumption can result from naturally occurring sources such as wildlife. Because these narrative bacteria criteria do not address bacteria from wildlife sources, EPA disapproved them as not adequately protecting recreation in and on the waters in Class AA, A and SA waters, and propagation and harvesting of shellfish in Class SA waters.

b. What is EPA proposing? i. Recreational Bacteria Criteria. EPA is proposing recreational criteria for Class AA, A, B, C, GPA, SA, SB and SC waters in Indian lands based on EPA's 2012 Recreational Water Quality Criteria (RWQC) recommendations (EPA Office of Water 820–F–12–058). The criterion magnitude is expressed in terms of *Escherichia coli* colony forming units per 100 milliliters (cfu/100 ml) for fresh waters and *Enterococcus* spp. colony forming units per 100 milliliters (cfu/100 ml) for marine waters, consistent with Maine's current criteria expression and EPA's 2012 recommendations.

The 2012 RWQC recommendations offer two sets of numeric concentration thresholds, either of which would protect the designated use of primary contact recreation and, therefore, would protect the public from exposure to harmful levels of pathogens. The proposed criteria's magnitude, duration and frequency are based on EPA's illness rate of 32 NGI per 1,000 primary contact recreators, where NGI represents the gastrointestinal illnesses as measured by EPA's National Epidemiological and Environmental Assessment of Recreational Water (NEEAR) study.[41] EPA chose the 32 NGI per 1,000 primary contact recreators illness rate because the resulting geometric mean components of the criteria most closely match the geometric means in Maine's criteria. EPA specifically invites comment on whether instead to base the criteria on EPA's alternative illness threshold of 36 NGI per 1,000 primary contact recreators set forth in the 2012 RWQC.

In addition, for Class AA, A and SA waters in Indian lands, EPA is proposing to include Maine's narrative criteria expression that bacteria content of these waters be no greater than as "naturally occurs." This maintains Maine's intention that the waters be free of human caused pathogens, while the specific numeric criteria EPA proposes also provide protection for designated recreational uses in the event there are wildlife sources.

Finally, in accordance with the recommendation to Maine in EPA's March 16, 2015 letter, EPA is proposing that the criteria apply all year long in all waters in Indian lands. This differs from Maine's disapproved criteria, which do not apply from October 1 through May 14 in Classes B, C, GPA, SB, and SC waters. EPA does not have a record to support a conclusion that no recreation in and on these waters occurs between October 1 and May 14. On the contrary, EPA has found information indicating that white water rafting, paddling, and kayaking occur after October 1,[42] and during consultation EPA learned from the Penobscot Nation that as long as there is no ice on the Penobscot River, recreators are on the river paddling and fishing. At the same time, EPA recognizes that there may be periods during which recreational activities do not occur in and on these waters. Therefore, EPA specifically invites comment on whether EPA should promulgate an alternative seasonal term during which the criteria would not apply that would adequately protect recreational uses, such as, for example, December through February.

ii. Shellfishing Bacteria Criteria. EPA proposes shellfishing criteria for SA waters in Indian lands based on recommendations from the National Shellfish Sanitation Program (NSSP). The criteria magnitude is expressed in terms of total coliform Most Probable Number (MPN)/100 ml.

EPA last provided recommendations for bacteria to protect shellfish harvesting uses in its 1986 304(a) recommendations,[43] which provided fecal coliform criteria for shellfish harvesting. As described in that document, the basis for the criteria was a study from the NSSP which related an accepted international standard of total coliforms to fecal coliforms. NSSP has published several versions of its guidance which provides recommendations for criteria expressed as fecal coliform or total coliform. EPA proposes to promulgate criteria as total coliform to be consistent with Maine's narrative criteria to protect shellfish harvesting in Class SB and SC waters, which say that the numbers of total coliform bacteria or other specified indicator organisms in samples representative of the waters in Class SB and SC shellfish harvesting areas may not exceed criteria recommended under the National Shellfish Sanitation Program, United States Food and Drug Administration.

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[41] USEPA. 2010. Report on 2009 National Epidemiologic and Environmental Assessment of Recreational Water Epidemiology Studies. United States Environmental Protection Agency, Washington, DC EPA–600–R–10–168.

[42] *http://www.penobscotadventures.com/online-booking/* (whitewater rafting on Penobscot River Oct. 2–4, 2015); *http://www.paddleandchowder.org/* (paddling/kayaking in October)

[43] USEPA. 1986. Quality Criteria for Water 1986, United States Environmental Protection Agency, Washington, DC. EPA 440/5–86–001.

EPA proposes that in Class SA shellfish harvesting areas, the number of total coliform bacteria in samples representative of the waters in shellfish harvesting areas shall not exceed a geometric mean for each sampling station of 70 MPN (most probable number) per 100 ml, with not more than 10% of samples exceeding 230 MPN per 100 ml for the taking of shellfish. The proposal is consistent with the current NSSP recommendations for total coliform included in the "Standard for the Approved Growing Area Classification in the Remote Status."[44] Therefore, the proposed criteria are protective of shellfish harvesting uses in Class SA waters.

2. Ammonia Criteria for Fresh Waters. a. What did EPA disapprove? On March 16, 2015, EPA disapproved the ammonia criteria for protection of aquatic life for fresh waters in Indian lands. The criteria are set forth in DEP Rule Chapter 584, Appendix A. EPA's disapproval was based on a review of whether the criteria protect the applicable designated uses and are based on sound scientific rationale. EPA revised its CWA Section 304(a) recommended ammonia criteria for fresh waters in August 2013 and incorporated the latest science for freshwater mussels and snails, which are sensitive to ammonia toxicity.[45] This science was not included in EPA's 1999 ammonia criteria recommendations, on which Maine's criteria are based. Therefore, EPA concluded that Maine's criteria are not protective of the designated use because they are not protective of freshwater mussels and snails and, accordingly, disapproved the criteria.

b. What is EPA proposing? Ammonia is a constituent of nitrogen pollution. Unlike other forms of nitrogen, which can cause eutrophication of a waterbody at elevated concentrations, the primary concern with ammonia is its direct toxic effects on aquatic life, which are exacerbated by elevated pH and temperature.

EPA proposes ammonia criteria for fresh waters in Indian lands based on the 2013 updated 304(a) recommended ammonia criterion. The acute and chronic criteria concentrations in EPA's 2013 update are expressed as functions of temperature and pH, so the applicable criteria vary by waterbody, depending on the temperature and pH of those waters. The criteria document describes the relationship between ammonia and these water quality factors and provides tables showing how the criteria values change with varying pH and temperatures. EPA's proposed criteria include tables that contain Criterion Maximum Concentrations (CMC) and Criterion Continuous Concentrations (CCC) that correspond to a range of temperatures and pH values, and require that the applicable CMCs and CCCs shall not be exceeded. In addition, consistent with EPA's recommended criteria, the proposed criteria include a requirement that the highest four-day average within the same 30-day period used to determine compliance with the CCC shall not exceed 2.5 times the CCC, more than once every three years. For the reasons explained in EPA's 304(a) criteria recommendations for ammonia, EPA's proposed criteria are protective of the designated aquatic life use and based on sound science.

3. pH Criterion for Fresh Waters. a. What did EPA disapprove? Maine's freshwater pH criterion in 38 M.R.S. 464(4.A(5)) prohibits discharges from causing the pH of receiving waters to fall outside the range of 6.0 to 8.5. On June 5, 2015, EPA disapproved the pH criterion for fresh waters in Indian lands because the lower end of the range (6.0) is not protective of aquatic life uses.

b. What is EPA proposing? EPA proposes a pH criterion with a range of 6.5 to 8.5. The proposal is based on the lower value of EPA's recommended pH criterion (6.5 to 9.0)[46] to protect freshwater fish and bottom-dwelling invertebrates that provide food for freshwater fish. In waters that are more acidic than 6.5, the likelihood of harm to aquatic species increases when periodic acidic inputs (either natural or anthropogenic in origin) liberate CO_2 from bicarbonate in the water leading to direct lethality as a result of lack of oxygen, or causing a further drop in pH into potentially lethal ranges. Fish suffer adverse physiological effects increasing in severity as the degree of acidification increases, until lethal levels are reached. Therefore, EPA proposes that the pH of fresh waters in Indian lands in Maine shall not fall below 6.5. EPA includes in the proposal Maine's existing value of 8.5 for the upper end of the pH range because it is within the range of 6.5 to 9.0 that EPA recommends in order to protect aquatic species from extreme pH conditions.

4. Temperature Criteria for Tidal Waters. a. What did EPA disapprove? On June 5, 2015, EPA disapproved Maine's tidal temperature criteria in DEP Rule Chapter 582(5), for tidal waters in Indian lands (specifically, the intertidal zone at Pleasant Point), because they are not protective of aquatic life uses. The criteria allow a 4 °F monthly average rise in ambient temperatures from individual dischargers from September 2 to May 30, and a 1.5 °F monthly average rise from June 1 to September 1, as measured outside of any mixing zone; they also allow a maximum temperature of 85 °F as measured outside of any mixing zone. EPA disapproved the 4 °F temperature rise provision and the maximum temperature criterion of 85 °F as not protective of indigenous species that have been associated with tidal waters in the vicinity of Pleasant Point, where typical temperatures are in the 37 °–52 °F range based on the nearest NOAA monitoring station at Eastport, Maine.

b. What is EPA proposing? In order to assure protection of the indigenous marine community characteristic of the intertidal zone at Pleasant Point, EPA proposes criteria consistent with EPA's 304(a) recommended criteria for tidal waters.[47] EPA proposes a maximum increase in the weekly average baseline ambient temperature resulting from artificial sources of 1 °C (1.8 °F) during all seasons of the year, provided that the summer maximum of 18 °C (64.4 °F) is not exceeded. The proposal specifies that the weekly average baseline thermal condition must be calculated using the daily maxima averaged over a 7-day period, and must be measured at a reference site where there is no unnatural thermal addition from any source, that is in reasonable proximity to the thermal discharge (within five miles), and that has similar hydrography to that of the receiving waters at the discharge. Further, EPA proposes that daily temperature cycles characteristic of the waterbody shall not be altered in either amplitude or frequency.[48]

The natural temperature fluctuation provision in the proposed rule is necessary to induce and protect the reproductive cycles of aquatic organisms and to regulate other life factors. Since aquatic organisms are essentially poikilotherms (cold blooded), the temperature of the water regulates their metabolism and ability to survive and reproduce effectively. In addition, natural temperature fluctuations are essential to maintain the existing community structure and the geographic distribution of species.[49]

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[44] USDA. 2013. National Shellfish Sanitation Program (NSSP) Guide for the Control of Molluscan Shellfish: 2013 Revision. United States Food and Drug Administration, Washington, DC page 210. posted at *http://www.fda.gov/downloads/Food/GuidanceRegulation/FederalStateFoodPrograms/UCM415522.pdf*

[45] USEPA. 2013. Aquatic Life Ambient Water Quality Criteria for Ammonia—Freshwater 2013. United States Environmental Protection Agency, Washington, DC EPA 822–R–13–001

[46] USEPA. 1986. Quality Criteria for Water 1986, United States Environmental Protection Agency, Washington, DC. EPA 440/5–86–001, pH section.

[47] USEPA. 1986. Quality Criteria for Water 1986, U.S. Environmental Protection Agency, Office of Water, Washington, DC. EPA 440/5–86–001. Temperature section.

[48] Id.

In intertidal waters, elevated temperatures affect periphyton, benthic invertebrates, and fish, in addition to causing shifts in the dominant primary producers. Community balance can be influenced strongly by temperature-dependent factors, including: rates of reproduction, recruitment, and growth of each component population—all of which were considered in deriving all components of the temperature criteria in this rule. A few degrees elevation in average monthly temperature outside of the conditions described in this rule can appreciably alter a community through changes in interspecies relationships.[50]

The intertidal zone at Pleasant Point is home to indigenous species such as pollock, haddock, juvenile flounder, juvenile and adult shad, cod, alewife, blueback herring as well as various species of clams, crabs, urchins and lobsters found in the vicinity of these waters (personal communication Dr. Theo Willis, University of Southern Maine and Dr. Robert Stephenson, St. Andrews Biological Station, St. Andrews NB).

Pollock are indigenous fish that inhabit the subtidal and intertidal zones of the Gulf of Maine.[51] Within the subtidal and intertidal zones, pollock move to different locations depending on the temperature conditions.[52] Pollock are abundant in the intertidal zone in the summer and fall months, and as such, are an appropriate sensitive, indigenous species by which to set a summer maximum temperature criterion.[53] EPA proposes a summer weekly maximum of 18 °C (64.4 °F), which is consistent with EPA's Gold Book methodology and is the value identified in the scientific literature that is protective of juvenile pollock (*Pollachius virens*).[54]

The summer maximum of 18 °C (64.4 °F) is a weekly average value and is calculated using the daily maxima averaged over a 7-day period, similar to the calculation of the baseline ambient temperature. EPA uses a weekly average maximum temperature because, as explained in regional guidance, "it describes the maximum temperatures . . . but is not overly influenced by the maximum temperature of a single day. Thus it reflects an average of maximum temperatures that fish are exposed to over a week-long period." [55]

Collectively, the criteria that EPA proposes will protect aquatic life from the deleterious effects of increased mean water temperature and from alterations in the amplitude and frequency of mean-high and mean-low water temperatures. EPA's recommended 304(a) criteria, on which this proposal is based, are designed to protect aquatic species from short- and long-term temperature anomalies, resulting in the maintenance of reproductive, recruitment, and growth cycles.

5. Natural Conditions Provisions. a. What did EPA disapprove? On June 5, 2015, EPA disapproved, for waters in Indian lands, two natural conditions provisions as they apply to water quality criteria to protect human health. Specifically, EPA disapproved 38 M.R.S. 420(2.A), which states "Except as naturally occurs or as provided in paragraphs B and C, the board shall regulate toxic substances in the surface waters of the State at the levels set forth in federal water quality criteria as established by the United States Environmental Protection Agency pursuant to the Federal Water Pollution Control Act, Public Law 92–500, Section 304(a), as amended"; and 38 M.R.S. 464(4.C), which states: "Where natural conditions, including, but not limited to, marshes, bogs and abnormal concentrations of wildlife cause the dissolved oxygen or other water quality criteria to fall below the minimum standards specified in sections 465, 465–A and 465–B, those waters shall not be considered to be failing to attain their classification because of those natural conditions."

EPA concluded that to the extent that these provisions would allow an exception from otherwise applicable HHC, they are not consistent with EPA's interpretation of the relationship between natural conditions and the protection of designated human health uses, which is articulated in EPA's November 5, 1997 guidance entitled "Establishing Site Specific Aquatic Life Criteria Equal to Natural Background." [56] In contrast with aquatic life uses,[57] a naturally occurring level of a pollutant does not necessarily protect designated human health uses. Naturally occurring levels of a pollutant are assumed to protect aquatic life species that have naturally developed in the affected waters. However, human health does not adapt to higher ambient pollutant levels, even if they are naturally caused. Consequently, the same assumptions of protectiveness cannot be made with regard to designated uses that affect human health (*e.g.*, people eating fish or shellfish from Maine waters, and recreating in Maine waters). For this reason, EPA's 1997 guidance also states that where the natural background concentration exceeds the state-adopted human health criterion, at a minimum, states should re-evaluate the human health use designation.

EPA disapproved the natural conditions clauses at 38 M.R.S 464(4.C) and 420(2.A) for waters in Indian lands as they apply to criteria that protect human health because the application of these provisions fails to protect designated human health uses as required by the CWA and federal WQS regulations at 40 CFR 131.11(a).

b. What is EPA proposing? For each of the disapproved naturally occurring or natural conditions exceptions, EPA proposes a regulation that states that such provision "does not apply to water quality criteria intended to protect human health." Under this approach, Maine still could implement the natural conditions provisions for other criteria related to non-human health uses.

6. Mixing Zone Policy. a. What did EPA disapprove? On June 5, 2015, EPA disapproved, for waters in Indian lands, Maine's mixing zone policy set forth in 38 M.R.S. 451. This provision allows the DEP to establish mixing zones that would allow the "reasonable" opportunity for dilution or mixture of pollutants before the receiving waters would be evaluated for WQS compliance.

States are not required to adopt mixing zone policies into their WQS, but if they do, they are subject to EPA review and approval. 40 CFR 131.13. A mixing zone is a limited area or volume of water where initial dilution of a discharge takes place, and where certain numeric criteria may be exceeded, but the designated uses of the waterbody as a whole must still be protected. EPA's guidance includes specific recommendations to ensure that mixing zones do not impair the designated uses of the waterbody as a whole. Among other things, a state mixing zone policy must ensure that pollutant concentrations in the mixing zone are not lethal to organisms passing through and do not cause significant human health risks; and that mixing zones do not endanger critical areas such as breeding or spawning grounds, drinking water intakes and sources, shellfish beds, or endangered or threatened species habitat. Maine's mixing zone law does not contain any of these or other protective safeguards to ensure the protection of designated uses. The only specific limitation on mixing zones in Maine's mixing zone statute is that they be "reasonable." There are also no state regulations that define the boundaries of a "reasonable" mixing zone. Therefore EPA disapproved Maine's law for waters in Indian lands as being inadequate to protect designated uses.

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[49] Id.

[50] Id.

[51] Id.

[52] Id.

[53] Id.

[54] Cargnelli et al. National Oceanic and Atmospheric Administration. NOAA Technical Memorandum NMFS–NE–131. Essential Fish Habitat Source Document: Pollock, *Pollachius virens*, Life History and Habitat Characteristics. September 1999. Pages 1–38.

[55] Id.

[56] Davies, Tudor T., *Establishing Site Specific Aquatic Life Criteria Equal to Natural Background*, EPA Memorandum to Water Management Division Directors, Regions 1–10, State and Tribal Water Quality Management Program Directors, posted at: *http://www.epa.gov/sites/production/files/2014-08/documents/naturalbackground-memo.pdf*

[57] EPA approved these natural conditions provisions for waters in Indian lands as they relate to aquatic life, acknowledging that there may be naturally occurring concentrations of pollutants that exceed the national criteria published under section 304(a) of the CWA that are still protective of aquatic life.

b. What is EPA proposing? EPA proposes, for waters in Indian lands, a mixing zone policy that retains Maine's statutory mixing zone language and expands upon it by: 1. Including specific information that a request for a mixing zone must contain, and 2. including minimum requirements that any mixing zone must satisfy in order to qualify for approval by DEP.

The proposed information requirements are intended to ensure that any discharger seeking DEP's approval of a mixing zone provides sufficient information for DEP to determine whether and to what extent a mixing zone may be authorized.

The proposed mixing zone minimum requirements are intended to ensure that any mixing zone approved by DEP will not interfere with or impair the designated uses of the waterbody as a whole. They are consistent with recommendations in EPA's Water Quality Standards Handbook (2014).[58] The proposed rule clarifies the extent to which water quality criteria may be exceeded in a mixing zone: chronic water quality criteria for those parameters approved by DEP may be exceeded within the mixing zone; acute water quality criteria may be exceeded for such parameters, but only within the zone of initial dilution inside the mixing zone, and the acute criteria must be met as close to the point of discharge as practicably attainable; and no water quality criteria may be exceeded outside of the boundary of a mixing zone as a result of the discharge for which the mixing zone was authorized. The proposed rule also specifies that a mixing zone must be as small as necessary, and that pollutant concentrations must be minimized and reflect the best practicable engineering design of the outfall to maximize initial mixing.The proposal includes a requirement that mixing zones be established consistent with the methodologies in Section 4.3 and 4.4 of EPA's "Technical Support Document for Water Quality-based Toxics Control" EPA/505/2–90–001, dated March 1991. This requirement is consistent with EPA's recommendation that mixing zone policies describe the general procedures for defining and implementing mixing zones in terms of location, maximum size, shape, outfall design, and in-zone water quality, at a minimum.[59] EPA also proposes a requirement that the mixing zone demonstration be based on the assumption that a pollutant does not degrade within the proposed mixing zone, unless a valid scientific study demonstrates otherwise. This assumption provides a conservative estimate of potential pollutant concentrations to be used when calculating allowable mixing zone discharges.

EPA proposes to prohibit the use of a mixing zone for bioaccumulative pollutants and for bacteria, consistent with EPA's guidance that recommends that mixing zone policies not allow mixing zones for discharges of these pollutants in order to protect the designated uses.[60] EPA adopted this approach for bioaccumulative pollutants in 2000 when it amended its 1995 Final Water Quality Guidance for the Great Lakes System at 40 CFR part 132 to phase out mixing zones for existing discharges of bioaccumulative pollutants within the Great Lakes Basin and ban such mixing zones for new discharges within the Basin. Because fish tissue contamination tends to be a far-field problem affecting entire or downstream waterbodies rather than a near-field problem being confined to the area within a mixing zone, EPA has emphasized that it may be appropriate to restrict or eliminate mixing zones for bioaccumulative pollutants in certain situations such as where mixing zones may encroach on areas often used for fish harvesting, particularly for stationary species such as shellfish, and where there are uncertainties in the assimilative capacity of the waterbody.

Similarly, because bacteria mixing zones may cause significant human health risks and endanger critical areas (*e.g.*, recreational areas), EPA recommends that mixing zone policies not allow mixing zones for bacteria in waters designated for primary contact recreation. As explained in EPA's guidance, the presumption in waters designated for primary contact recreation is that primary contact recreation can safely occur throughout the waterbody and, therefore, that bacteria levels will not exceed criteria.[61] People recreating in or through a bacteria mixing zone may be exposed to greater risk of illnesses than would otherwise be allowed by the criteria for protection of the recreation use. Primary contact recreation is a designated use for all waters in Maine, including in Indian lands. EPA is therefore proposing to prohibit mixing zones for bacteria for the waters in Indian lands because they could result in a significant human health risk.

EPA is not aware of instances where DEP has previously authorized mixing zones for bioaccumulative pollutants or bacteria, and therefore EPA does not expect that these prohibitions will pose hardship to existing dischargers.

The proposed rule also establishes a number of restrictions to protect designated uses, such as requirements that the mixing zone be unlikely to jeopardize the continued existence of any endangered or threatened species listed under section 4 of the Endangered Species Act or result in the destruction or adverse modification of such species' critical habitat; not extend to drinking water intakes or sources; not cause significant human health risks; not endanger critical areas such as breeding and spawning grounds, habitat for state-listed threatened or endangered species, areas with sensitive biota, shellfish beds, fisheries, and recreational areas; not result in lethality to mobile, migrating, and drifting organisms passing through or within the mixing zone; not overlap with another mixing zone; not attract aquatic life; and not result in any objectionable color, odor, taste, or turbidity.

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[58] USEPA. 2014. Water Quality Standards Handbook, Chapter 5. EPA–820–B–14–004.

[59] Id. at p. 4.

[60] Id. at pp. 9–10.

[61] Id. at p. 10.

C. Proposed WQS for All Waters in Maine

1. Dissolved Oxygen Criteria for Class A Waters

a. What Did EPA Disapprove? On June 5, 2015, EPA disapproved Maine's dissolved oxygen (DO) criteria for Class A fresh waters, set forth in 38 M.R.S. 465(2.B), for all waters in Maine, including waters in Indian lands. Maine's criteria state that "The dissolved oxygen content of Class A waters shall be not less than 7 parts per million or 75% of saturation, whichever is higher." Maine's DO criteria for Class A fresh waters are protective of all life stages of warmwater species and adult coldwater species, but are not high enough to protect the early life stages of coldwater species. Therefore, EPA disapproved the criteria because they do not protect early life stages of coldwater species and, therefore, do not protect the full aquatic life designated use.

b. What Is EPA Proposing? EPA proposes year-round DO criteria for Class A waters that are identical to Maine's existing criteria (not less than 7 mg/L or 75% of saturation, whichever is higher).[62]

Maine's existing year-round criteria are higher, and more protective than, EPA's minimum DO recommendations for non-early life stages.[63] EPA therefore proposes the same year-round criteria that Maine uses for these waters, in deference to Maine's determination of what is necessary to protect non-early life stages and to be consistent with Maine's criteria for Class B waters.

For fish spawning areas in Class A waters, for the period of October 1 through May 14, EPA proposes a 7-day mean DO concentration of ≥ 9.5 mg/L and a 1-day minimum of ≥ 8 mg/L. These proposed criteria to protect more sensitive early life stages of coldwater species are consistent with EPA's 304(a) criteria recommendations and will protect those stages against potentially damaging and lethal effects. EPA's proposed criteria for fish spawning areas for early life stages are also consistent with Maine's criteria for early life stages in Class B waters.

2. Waiver or Modification of WQS

a. What Did EPA Disapprove? On June 5, 2015, for all waters in Maine, EPA disapproved 38 M.R.S. 363–D as it relates to WQS. Under this law, the DEP Commissioner (or designee) may waive or modify any provision of Maine's Title 38, Chapter 3 (related to the protection and improvement of waters), which includes WQS, to assist in any oil spill response activity conducted in accordance with the national or state contingency plans, or as otherwise directed by the federal on-scene coordinator or the Commissioner (or designee).

EPA disapproved this statute as it relates to WQS, because it is not consistent with the minimum federal requirements that must be satisfied in order for a state to modify or waive a WQS. Specifically, waivers or modifications of WQS that would have the effect of removing a designated use or creating a subcategory of use, including waiving or modifying criteria necessary to support the use, may occur under the CWA only in accordance with 40 CFR 131.10(g) (which, among other things, requires a use attainability analysis). Before taking such action, states must provide public notice and a public hearing, and revised WQS are subject to EPA review and approval. Because 38 M.R.S. 363–D does not contain any of these requirements, EPA disapproved it—for WQS purposes only—as being inconsistent with federal law.

b. What Is EPA Proposing? EPA proposes a regulation that states that 38 M.R.S. 363–D does not apply to state or federal WQS applicable to waters in Maine, including designated uses, criteria to protect designated uses, and antidegradation requirements. The proposed regulation would not interfere with the Commissioner's authority to modify applicable WQS through the removal of a use or establishment of a subcategory of a use if justified by a use attainability analysis, consistent with 40 CFR 131.10(g), or to grant a WQS variance, consistent with 40 CFR 131.14. Before taking such actions, the Commissioner must provide for public notice and a public hearing; and revised WQS, including WQS variances, are subject to EPA review and approval. Maine can still get short-term relief from compliance with WQS during oil spills through its permitting program. EPA's regulations at 40 CFR 122.3(d) provide a limited exception from the need to get an NPDES permit, and indirectly, to comply with WQS, for "any discharge in compliance with the instructions of an On-Scene Coordinator pursuant to 40 CFR part 300 (The National Oil and Hazardous Substances Pollution Contingency Plan) or 33 CFR 153.10(e) (Pollution by Oil and Hazardous Substances)." Maine has a similar permitting provision at 38 M.R.S. 413(2–G.B) that it can rely on in such circumstances.

D. Proposed WQS for Waters in Maine Outside of Indian Lands

1. HHC for Phenol Consumption of Water Plus Organisms

a. What Did EPA Disapprove? On March 16, 2015, EPA disapproved Maine's phenol criterion for the protection of human health consumption of water plus organisms, in DEP Rule Chapter 584, Appendix A, submitted to EPA on January 14, 2013, for waters throughout Maine. While DEP had based the criterion on EPA's then-current criterion recommendation, DEP made an inadvertent mathematical error that resulted in a less stringent criterion than EPA's recommendation (10,514 µg/L rather than the correctly computed result of 10,267 µg/L). In the absence of supporting scientific information to justify a finding that the less stringent criterion adequately protects the designated use, EPA disapproved the criterion for all waters in Maine as not being protective of the designated use and based on sound scientific rationale.

b. What Is EPA Proposing? In June 2015, soon after EPA's March 2015 disapproval, EPA updated its section 304(a) recommended criterion for phenol as part of a broader package of 304(a) criteria and identified a recommended criterion of 4000 µg/L. When promulgating federal criteria, EPA bases the criteria on the most up-to-date scientific information. Consistent with the June 2015 recommendation, EPA accordingly proposes a phenol criterion for the protection of human health consumption of water plus organisms of 4000 µg/L for waters in Maine outside of Indian lands. This proposed phenol criterion is based on EPA's default inputs for relative source contribution, body weight, drinking water intake, and pollutant-specific reference doses and cancer slope factors, discussed in more detail in section IV.A.1.a. Since this criterion will apply in state waters outside of Indian lands, EPA used Maine's default fish consumption rate of 32.4 g/day, as well as a cancer risk level of 10–6 consistent with DEP Rule Chapter 584. The FCR reflects local survey data, and the CRL is consistent with EPA's recommendation. Therefore, the proposed criterion is protective of human health in waters in Maine outside of Indian lands, for the reasons discussed in EPA's 2015 criteria update.

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[62] Dissolved oxygen values expressed as mg/L are equivalent to the same values expressed as ppm.

[63] EPA's recommended criteria for non-early life stages are expressed as 30 day mean (6.5 mg/L in cold water, 5.5 mg/L in warm water), 7 day mean minimum (5.0 mg/L in cold water, 4.0 mg/l in warm water), and 1 day minimum (4.0 mg/L in cold water, 3.0 mg/L in warm water). From USEPA. 1986. Quality Criteria for Water 1986, U.S. Environmental Protection Agency, Office of Water, Washington, DC. EPA 440/5–86–001. Dissolved Oxygen section.

V. Economic Analysis

These WQS may serve as a basis for development of NPDES permit limits. Maine has NPDES permitting authority, through which it ensures that discharges to waters of the state do not cause or contribute to an exceedance of WQS. EPA evaluated the potential costs to NPDES dischargers associated with state implementation of EPA's proposed WQS. This analysis is documented in the "Economic Analysis for Proposal of Certain Federal Water Quality Standards Applicable to Maine," which can be found in the record for this rulemaking.

Any NPDES-permitted facility that discharges pollutants for which the proposed WQS are more stringent than the WQS on which permit limits are currently based could potentially incur compliance costs. The types of affected facilities could include industrial facilities and POTWs discharging wastewater to surface waters (*i.e.,* point sources). EPA attributed to the proposed rule only those incremental costs that are above the costs associated with compliance with water quality based effluent limits (WQBELs) in current permits. Proposed criteria for pH, temperature, ammonia, and all but one HHC (for waters in Indian lands), proposed criteria for phenol (for state waters outside Indian lands), and proposed criteria for dissolved oxygen (for all state waters) are not expected to result in incremental costs to permitted dischargers. The cost analysis identifies potential costs of compliance with one HHC (bis(2-ethylhexyl)phthalate), bacteria, and the proposed mixing zone policy for waters in Indian lands.

EPA did not fully evaluate the potential for costs to nonpoint sources for this preliminary analysis. Very little data were available to assess the potential for the rule to result in WQS exceedances attributable to nonpoint sources. It is difficult to model and evaluate the potential cost impacts of this proposed rule to nonpoint sources because they are intermittent, variable, and occur under hydrologic or climatic conditions associated with precipitation events. Finally, legacy contamination (*e.g.,* in sediment) may be a source of ongoing loading. Atmospheric deposition may also contribute loadings of the pollutants of concern (*e.g.,* mercury). EPA did not estimate sediment remediation costs, or air pollution controls costs, for this preliminary analysis.

A. Identifying Affected Entities

EPA identified 33 dischargers to waters in Indian lands and their tributaries, two facilities that discharge phenol to other state waters, and 26 facilities that discharge to Class A waters throughout the state. EPA identified 16 point source facilities that could incur additional costs as a result of this proposed rule. Of these potentially affected facilities, eight are major dischargers and eight are minor dischargers. Two are industrial dischargers and the remaining 14 are publicly owned treatment works (POTWs). EPA did not include general permit facilities in its analysis because data for such facilities are limited. EPA evaluated all of the potentially affected facilities.

B. Method for Estimating Costs

For the 16 facilities that may incur costs, EPA evaluated existing baseline permit conditions and potential to exceed new effluent limits based on the proposed rule. In instances of exceedances of projected effluent limitations under the proposed criteria, EPA determined the likely compliance scenarios and costs. Only compliance actions and costs that would be needed above the baseline level of controls are attributable to the proposed rule.

EPA assumed that dischargers will pursue the least cost means of compliance with WQBELs. Incremental compliance actions attributable to the proposed rule may include pollution prevention, end-of-pipe treatment, and alternative compliance mechanisms (*e.g.,* variances). EPA annualized capital costs, including study (*e.g.,* variance) and program (*e.g.,* pollution prevention) costs, over 20 years using a 3% discount rate to obtain total annual costs per facility.

C. Results

Based on the results for the 16 facilities, EPA estimated a total annual cost of approximately $213,000 to $1.0 million. The low end of the range reflects $28,000 in annual pollution prevention costs for one facility and $185,300 in incremental annual operating costs for all POTWs to disinfect year-round and for some POTWs to dechlorinate year round. The high end of the cost range reflects incremental annual operating costs of $705,200 for all POTWs to both disinfect and dechlorinate year-round; the maximum estimated annual cost of $273,000 to comply with the updated mixing zone policy; and $43,096 in estimated annual costs for one facility to provide end-of-pipe treatment for bis(2-ethylhexyl)phthalate.

If the proposed criteria result in an incremental increase in impaired waters, resulting in the need for TMDL development, there could also be some costs to nonpoint sources of pollution. EPA had very limited information with which to assess potential impacts of the proposed revisions on ambient water quality. Given the scope of the proposed rule on certain waters and pollutants (notably toxic pollutants) and existing controls on wide-ranging nonpoint source pollution sources including in statewide TMDLs, EPA determined that any incremental costs on nonpoint sources are unlikely to be significant.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866 (Regulatory Planning and Review) and Executive Order 13563 (Improving Regulation and Regulatory Review)

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review. The proposed rule does not establish any requirements directly applicable to regulated entities or other sources of pollutants. However, these WQS may serve as a basis for development of NPDES permit limits. Maine has NPDES permitting authority, through which it ensures that discharges to waters of the state do not cause or contribute to an exceedance of WQS. In the spirit of Executive Order 12866, EPA evaluated the potential costs to NPDES dischargers associated with state implementation of EPA's proposed criteria. This analysis, *Economic Analysis for Proposal of Certain Federal Water Quality Standards Applicable to Maine,* is summarized in section V of the preamble and is available in the docket.

B. Paperwork Reduction Act

This action does not impose any direct new information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Actions to implement these WQS could entail additional paperwork burden. Burden is defined at 5 CFR 1320.3(b). This action does not include any information collection, reporting, or record-keeping requirements.

C. Regulatory Flexibility Act

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. Small entities, such as small businesses or small governmental jurisdictions, are not directly regulated by this rule. This proposed rule will thus not impose any requirements on small entities. We continue to be interested, however, in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. As these water quality criteria are not self-implementing, EPA's action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA. This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that could significantly or uniquely affect small governments.

E. Executive Order 13132

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

This action has tribal implications. However, it would neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. In the state of Maine, there are four federally recognized Indian tribes represented by five tribal governments. As a result of the unique jurisdictional provisions of the Maine Indian Claims Settlement Act, as described above, the state has jurisdiction for setting water quality standards for all waters in Indian lands in Maine. This rule would affect federally recognized Indian tribes in Maine because the water quality standards being proposed would apply to all waters in Indian lands and some will also apply to waters outside of Indian lands where the sustenance fishing designated use established by 30 M.R.S. 6207(4) and (9) applies, and because many of the proposed criteria for such waters are protective of the sustenance fishing designated use, which is based in the Indian claims settlement acts in Maine.

The EPA consulted with tribal officials under the EPA Policy on Consultation and Coordination with Indian Tribes early in the process of developing this proposed rule to permit them to have meaningful and timely input into its development. A summary of that consultation is provided in "Summary of Tribal Consultations Regarding Water Quality Standards Applicable to Waters in Indian Lands within the State of Maine," which is available in the docket for this rulemaking.

G. Executive Order 13045 (Protection of Children From Environmental Health and Safety Risks)

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk that may disproportionately affect children.

The public is invited to submit comments or identify peer-reviewed studies and data that assess effects of early life exposure.

H. Executive Order 13211 (Actions That Significantly Affect Energy Supply, Distribution, or Use)

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act of 1995

This action does not involve technical standards.

J. Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations)

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations.

Conversely, this action would increase protection for indigenous populations in Maine from disproportionately high and adverse human health effects. EPA developed the criteria included in this proposed rule specifically to protect Maine's designated uses, using the most current science, including local and regional information on fish consumption. Applying these criteria to waters in the state of Maine will afford a greater level of protection to both human health and the environment.

List of Subjects in 40 CFR Part 131

Environmental protection, Indians—lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: April 11, 2016.

Gina McCarthy,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 131 as follows:

PART 131—WATER QUALITY STANDARDS

■ 1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

Subpart D—Federally Promulgated Water Quality Standards

■ 2. Add § 131.43 to read as follows:

§ 131.43 Maine.

(a) *Human health criteria for toxics for waters in Indian lands and for waters outside of Indian lands where the sustenance fishing designated use established by 30 m.r.s. 6207(4) and (9) applies.* The criteria for toxic pollutants for the protection of human health are set forth in the following table 1:

TABLE 1—PROPOSED HUMAN HEALTH CRITERIA

Chemical name	CAS No.	Water & organisms (µg/L)	Organisms only (µg/L)
1. 1,1,2,2-Tetrachloroethane	79–34–5	0.09	0.2
2. 2-Trichloroethane	79–00–5	0.31	0.66
3. 1,1-Dichloroethylene	75–35–4	300	1000

TABLE 1—PROPOSED HUMAN HEALTH CRITERIA—Continued

Chemical name	CAS No.	Water & organisms (µg/L)	Organisms only (µg/L)
4. 1,2,4,5-Tetrachlorobenzene	95–94–3	0.002	0.002
5. 1,2,4-Trichlorobenzene	120–82–1	0.0056	0.0056
6. 1,2-Dichlorobenzene	95–50–1	200	300
7. 1,2-Dichloropropane	78–87–5	....	2.3
8. 1,2-Diphenylhydrazine	122–66–7	0.01	0.02
9. 1,2-Trans-Dichloroethylene	156–60–5	90	300
10. 1,3-Dichlorobenzene	541–73–1	1	1
11. 1,3-Dichloropropene	542–75–6	0.21	0.87
12. 1,4-Dichlorobenzene	106–46–7	....	70
13. 2,4,5-Trichlorophenol	95–95–4	40	40
14. 2,4,6-Trichlorophenol	88–06–2	0.20	0.21
15. 2,4-Dichlorophenol	120–83–2	4	4
16. 2,4-Dimethylphenol	105–67–9	80	200
17. 2,4-Dinitrophenol	51–28–5	9	30
18. 2,4-Dinitrotoluene	121–14–2	0.036	0.13
19. 2-Chloronaphthalene	91–58–7	90	90
20. 2-Chlorophenol	95–57–8	20	60
21. 2-Methyl-4,6-Dinitrophenol	534–52–1	1	2
22. 3,3'-Dichlorobenzidine	91–94–1	0.0096	0.011
23. 4,4'-DDD	72–54–8	9.3E–06	9.3E–06
24. 4,4'-DDE	72–55–9	1.3E–06	1.3E–06
25. 4,4'-DDT	50–29–3	2.2E–06	2.2E–06
26. Acenaphthene	83–32–9	6	7
27. Acrolein	107–02–8	3	....
28. Aldrin	309–00–2	5.8E–08	5.8E–08
29. alpha-BHC	319–84–6	2.9E–05	2.9E–05
30. alpha-Endosulfan	959–98–8	2	2
31. Anthracene	120–12–7	30	30
32. Antimony	7440–36–0	4.8	45
33. Benzene	71–43–2	0.40	1.2
34. Benzo (a) Anthracene	56–55–3	9.8E–05	9.8E–05
35. Benzo (a) Pyrene	50–32–8	9.8E–06	9.8E–06
36. Benzo (b) Fluoranthene	205–99–2	9.8E–05	9.8E–05
37. Benzo (k) Fluoranthene	207–08–9	0.00098	0.00098
38. beta-BHC	319–85–7	0.0010	0.0011
39. beta-Endosulfan	33213–65–9	3	3
40. Bis(2-Chloro-1-Methylethyl) Ether	108–60–1	100	300
41. Bis(2-Chloroethyl) Ether	111–44–4	0.026	0.16
42. Bis(2-Ethylhexyl) Phthalate	117–81–7	0.028	0.028
43. Bromoform	75–25–2	4.0	8.7
44. Butylbenzyl Phthalate	85–68–7	0.0077	0.0077
45. Carbon Tetrachloride	56–23–5	0.2	0.3
46. Chlordane	57–74–9	2.4E–05	2.4E–05
47. Chlorobenzene	108–90–7	40	60
48. Chlorodibromomethane	124–48–1	....	1.5
49. Chrysene	218–01–9	....	0.0098
50. Cyanide	57–12–5	4	30
51. Dibenzo (a,h) Anthracene	53–70–3	9.8E–06	9.8E–06
52. Dichlorobromomethane	75–27–4	....	2
53. Dieldrin	60–57–1	9.3E–08	9.3E–08
54. Diethyl Phthalate	84–66–2	50	50
55. Dimethyl Phthalate	131–11–3	100	100
56. Di-n-Butyl Phthalate	84–74–2	2	2
57. Dinitrophenols	25550–58–7	10	70
58. Endosulfan Sulfate	1031–07–8	3	3
59. Endrin	72–20–8	0.002	0.002
60. Endrin Aldehyde	7421–93–4	0.09	0.09
61. Ethylbenzene	100–41–4	8.9	9.5
62. Fluoranthene	206–44–0	1	1
63. Fluorene	86–73–7	5	5
64. gamma-BHC (Lindane)	58–89–9	0.33	....
65. Heptachlor	76–44–8	4.4E–07	4.4E–07
66. Heptachlor Epoxide	1024–57–3	2.4E–06	2.4E–06
67. Hexachlorobenzene	118–74–1	5.9E–06	5.9E–06
68. Hexachlorobutadiene	87–68–3	0.0007	0.0007
69. Hexachlorocyclohexane-Technical	608–73–1	0.00073	0.00076
70. Hexachlorocyclopentadiene	77–47–4	0.3	0.3
71. Hexachloroethane	67–72–1	0.01	0.01
72. Indeno (1,2,3-cd) Pyrene	193–39–5	9.8E–05	9.8E–05
73. Isophorone	78–59–1	28	140

TABLE 1—PROPOSED HUMAN HEALTH CRITERIA—Continued

Chemical name	CAS No.	Water & organisms (µg/L)	Organisms only (µg/L)
74. Methoxychlor	72–43–5	0.001	
75. Methylene Chloride	75–09–2		90
76. Methylmercury	22967–92–6		[a] 0.02 (mg/kg)
77. Nickel	7440–02–0	20	24
78. Nitrobenzene	98–95–3	10	40
79. Nitrosamines		0.0007	0.0322
80. N-Nitrosodibutylamine	924–16–3	0.0044	0.015
81. N-Nitrosodiethylamine	55–18–5	0.0007	0.0322
82. N-Nitrosodimethylamine	62–75–9	0.00065	0.21
83. N-Nitrosodi-n-propylamine	621–64–7	0.0042	0.035
84. N-Nitrosodiphenylamine	86–30–6	0.40	0.42
85. N-Nitrosopyrrolidine	930–55–2		2.4
86. Pentachlorobenzene	608–93–5	0.008	0.008
87. Pentachlorophenol	87–86–5	0.003	0.003
88. Phenol	108–95–2	3,000	20,000
89. Polychlorinated Biphenyls (PCBs)	1336–36–3	[b] 4.5E–06	[b] 4.5E–06
90. Pyrene	129–00–0	2	2
91. Selenium	7782–49–2	21	58
92. Toluene	108–88–3	24	39
93. Toxaphene	8001–35–2	5.3E–05	5.3E–05
94. Trichloroethylene	79–01–6	0.3	0.5
95. Vinyl Chloride	75–01–4	0.019	0.12
96. Zinc	7440–66–6	300	360

[a] This criterion is expressed as the fish tissue concentration of methylmercury (mg methylmercury/kg fish) and applies equally to fresh and marine waters.

[b] This criterion applies to total PCBs (e.g., the sum of all congener or isomer or homolog or Aroclor analyses).

(b) *Bacteria criteria for waters in Indian lands.* (1) The bacteria content of Class AA and Class A waters shall be as naturally occurs, and the minimum number of *Escherichia coli* bacteria shall not exceed a geometric mean of 100 colony-forming units per 100 milliliters (cfu/100 ml) in any 30-day interval; nor shall 320 cfu/100 ml be exceeded more than 10% of the time in any 30-day interval.

(2) In Class B, Class C, and Class GPA waters, the number of *Escherichia coli* bacteria shall not exceed a geometric mean of 100 colony forming units per 100 milliliters (cfu/100 ml) in any 30-day interval; nor shall 320 cfu/100 ml be exceeded more than 10% of the time in any 30-day interval.

(3) The bacteria content of Class SA waters shall be as naturally occurs, and the number of *Enterococcus* bacteria shall not exceed a geometric mean of 30 cfu/100 ml in any 30-day interval, nor shall 110 cfu/100 ml be exceeded more than 10% of the time in any 30-day interval.

(4) In Class SA shellfish harvesting areas, the number of total coliform bacteria in samples representative of the waters in shellfish harvesting areas shall not exceed a geometric mean for each sampling station of 70 MPN (most probable number) per 100 ml, with not more than 10% of samples exceeding 230 MPN per 100 ml for the taking of shellfish.

(5) In Class SB and SC waters, the number of *Enterococcus* bacteria shall not exceed a geometric mean of 30 cfu/100 ml in any 30-day interval, nor shall 110 cfu/100 ml be exceeded more than 10% of the time in any 30-day interval.

(c) *Ammonia criteria for fresh waters in Indian lands.* (1) The one-hour average concentration of total ammonia nitrogen (in mg TAN/L) shall not exceed, more than once every three years, the criterion maximum concentration (*i.e.*, the "CMC," or "acute criterion") set forth in Tables 2 and 3 of this section.

(2) The thirty-day average concentration of total ammonia nitrogen (in mg TAN/L) shall not exceed, more than once every three years, the criterion continuous concentration (*i.e.*, the "CCC," or "chronic criterion") set forth in Table 4.

(3) In addition, the highest four-day average within the same 30-day period as in 2 shall not exceed 2.5 times the CCC, more than once every three years.

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Table 2. Temperature and pH-Dependent Values of the CMC (Acute Criterion Magnitude)—*Oncorhynchus* spp. Present. (Figure 5a in Aquatic Life Ambient Water Quality Criteria for Ammonia-Freshwater, EPA 822-R-13-001, April 2013.)

	Temperature (°C)																
pH	0-14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
6.5	33	33	32	29	27	25	23	21	19	18	16	15	14	13	12	11	9.9
6.6	31	31	30	28	26	24	22	20	18	17	16	14	13	12	11	10	9.5
6.7	30	30	29	27	24	22	21	19	18	16	15	14	13	12	11	9.8	9.0
6.8	28	28	27	25	23	21	20	18	17	15	14	13	12	11	10	9.2	8.5
6.9	26	26	25	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	7.9
7.0	24	24	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	8.0	7.3
7.1	22	22	21	20	18	17	15	14	13	12	11	10	9.3	8.5	7.9	7.2	6.7
7.2	20	20	19	18	16	15	14	13	12	11	9.8	9.1	8.3	7.7	7.1	6.5	6.0
7.3	18	18	17	16	14	13	12	11	10	9.5	8.7	8.0	7.4	6.8	6.3	5.8	5.3
7.4	15	15	15	14	13	12	11	9.8	9.0	8.3	7.7	7.0	6.5	6.0	5.5	5.1	4.7
7.5	13	13	13	12	11	10	9.2	8.5	7.8	7.2	6.6	6.1	5.6	5.2	4.8	4.4	4.0
7.6	11	11	11	10	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5
7.7	9.6	9.6	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5	3.2	3.0
7.8	8.1	8.1	7.9	7.2	6.7	6.1	5.6	5.2	4.8	4.4	4.0	3.7	3.4	3.2	2.9	2.7	2.5
7.9	6.8	6.8	6.6	6.0	5.6	5.1	4.7	4.3	4.0	3.7	3.4	3.1	2.9	2.6	2.4	2.2	2.1
8.0	5.6	5.6	5.4	5.0	4.6	4.2	3.9	3.6	3.3	3.0	2.8	2.6	2.4	2.2	2.0	1.9	1.7
8.1	4.6	4.6	4.5	4.1	3.8	3.5	3.2	3.0	2.7	2.5	2.3	2.1	2.0	1.8	1.7	1.5	1.4
8.2	3.8	3.8	3.7	3.5	3.1	2.9	2.7	2.4	2.3	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2
8.3	3.1	3.1	3.1	2.8	2.6	2.4	2.2	2.0	1.9	1.7	1.6	1.4	1.3	1.2	1.1	1.0	0.96
8.4	2.6	2.6	2.5	2.3	2.1	2.0	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1.0	0.93	0.86	0.79
8.5	2.1	2.1	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2	1.1	0.98	0.90	0.83	0.77	0.71	0.65
8.6	1.8	1.8	1.7	1.6	1.5	1.3	1.2	1.1	1.0	0.96	0.88	0.81	0.75	0.69	0.63	0.59	0.54
8.7	1.5	1.5	1.4	1.3	1.2	1.1	1.0	0.94	0.87	0.80	0.74	0.68	0.62	0.57	0.53	0.49	0.45
8.8	1.2	1.2	1.2	1.1	1.0	0.93	0.86	0.79	0.73	0.67	0.62	0.57	0.52	0.48	0.44	0.41	0.37
8.9	1.0	1.0	1.0	0.93	0.85	0.79	0.72	0.67	0.61	0.56	0.52	0.48	0.44	0.40	0.37	0.34	0.32
9.0	0.88	0.88	0.86	0.79	0.73	0.67	0.62	0.57	0.52	0.48	0.44	0.41	0.37	0.34	0.32	0.29	0.27

Table 3. Temperature and pH-Dependent Values of the CMC (Acute Criterion Magnitude)—*Oncorhynchus* spp. Absent. (Figure 5b in Aquatic Life Ambient Water Quality Criteria for Ammonia-Freshwater, EPA 822-R-13-001, April 2013.)

Temperature (°C)

pH	0-10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
6.5	51	48	44	41	37	34	32	29	27	25	23	21	19	18	16	15	14	13	12	11	9.9
6.6	49	46	42	39	36	33	30	28	26	24	22	20	18	17	16	14	13	12	11	10	9.5
6.7	46	44	40	37	34	31	29	27	24	22	21	19	18	16	15	14	13	12	11	9.8	9.0
6.8	44	41	38	35	32	30	27	25	23	21	20	18	17	15	14	13	12	11	10	9.2	8.5
6.9	41	38	35	32	30	28	25	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	7.9
7.0	38	35	33	30	28	25	23	21	20	18	17	15	14	13	12	11	10	9.4	8.6	7.9	7.3
7.1	34	32	30	27	25	23	21	20	18	17	15	14	13	12	11	10	9.3	8.5	7.9	7.2	6.7
7.2	31	29	27	25	23	21	19	18	16	15	14	13	12	11	9.8	9.1	8.3	7.7	7.1	6.5	6.0
7.3	27	26	24	22	20	18	17	16	14	13	12	11	10	9.5	8.7	8.0	7.4	6.8	6.3	5.8	5.3
7.4	24	22	21	19	18	16	15	14	13	12	11	9.8	9.0	8.3	7.7	7.0	6.5	6.0	5.5	5.1	4.7
7.5	21	19	18	17	15	14	13	12	11	10	9.2	8.5	7.8	7.2	6.6	6.1	5.6	5.2	4.8	4.4	4.0
7.6	18	17	15	14	13	12	11	10	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5
7.7	15	14	13	12	11	10	9.3	8.6	7.9	7.3	6.7	6.2	5.7	5.2	4.8	4.4	4.1	3.8	3.5	3.2	2.9
7.8	13	12	11	10	9.3	8.5	7.9	7.2	6.7	6.1	5.6	5.2	4.8	4.4	4.0	3.7	3.4	3.2	2.9	2.7	2.5
7.9	11	9.9	9.1	8.4	7.7	7.1	6.6	3.0	5.6	5.1	4.7	4.3	4.0	3.7	3.4	3.1	2.9	2.6	2.4	2.2	2.1
8.0	8.8	8.2	7.6	7.0	6.4	5.9	5.4	5.0	4.6	4.2	3.9	3.6	3.3	3.0	2.8	2.6	2.4	2.2	2.0	1.9	1.7
8.1	7.2	6.8	6.3	5.8	5.3	4.9	4.5	4.1	3.8	3.5	3.2	3.0	2.7	2.5	2.3	2.1	2.0	1.8	1.7	1.5	1.4
8.2	6.0	5.6	5.2	4.8	4.4	4.0	3.7	3.4	3.1	2.9	2.7	2.4	2.3	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2
8.3	4.9	4.6	4.3	3.9	3.6	3.3	3.1	2.8	2.6	2.4	2.2	2.0	1.9	1.7	1.6	1.4	1.3	1.2	1.1	1.0	0.96
8.4	4.1	3.8	3.5	3.2	3.0	2.7	2.5	2.3	2.1	2.0	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1.0	0.93	0.86	0.79
8.5	3.3	3.1	2.9	2.7	2.4	2.3	2.1	1.9	1.8	1.6	1.5	1.4	1.3	1.2	1.1	0.98	0.90	0.83	0.77	0.71	0.65
8.6	2.8	2.6	2.4	2.2	2.0	1.9	1.7	1.6	1.5	1.3	1.2	1.1	1.0	0.96	0.88	0.81	0.75	0.69	0.63	0.58	0.54
8.7	2.3	2.2	2.0	1.8	1.7	1.6	1.4	1.3	1.2	1.1	1.0	0.94	0.87	0.80	0.74	0.68	0.62	0.57	0.53	0.49	0.45
8.8	1.9	1.8	1.7	1.5	1.4	1.3	1.2	1.1	1.0	0.93	0.86	0.79	0.73	0.67	0.62	0.57	0.52	0.48	0.44	0.41	0.37
8.9	1.6	1.5	1.4	1.3	1.2	1.1	1.0	0.93	0.85	0.79	0.72	0.67	0.61	0.56	0.52	0.48	0.44	0.40	0.37	0.34	0.32
9.0	1.4	1.3	1.2	1.1	1.0	0.93	0.86	0.79	0.73	0.67	0.62	0.57	0.52	0.48	0.44	0.41	0.37	0.34	0.32	0.29	0.27

Table 4. Temperature and pH-Dependent Values of the CCC (Chronic Criterion Magnitude). (Figure 6 in Aquatic Life Ambient Water Quality Criteria for Ammonia-Freshwater, EPA 822-R-13-001, April 2013.)

	Temperature (°C)																							
pH	0-7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30
6.5	4.9	4.6	4.3	4.1	3.8	3.6	3.3	3.1	2.9	2.8	2.6	2.4	2.3	2.1	2.0	1.9	1.8	1.6	1.5	1.5	1.4	1.3	1.2	1.1
6.6	4.8	4.5	4.3	4.0	3.8	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2.0	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1
6.7	4.8	4.5	4.2	3.9	3.7	3.5	3.2	3.0	2.8	2.7	2.5	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1
6.8	4.6	4.4	4.1	3.8	3.6	3.4	3.2	3.0	2.8	2.6	2.4	2.3	2.1	2.0	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1
6.9	4.5	4.2	4.0	3.7	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2.0	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1.0
7.0	4.4	4.1	3.8	3.6	3.4	3.2	3.0	2.8	2.6	2.4	2.3	2.2	2.0	**1.9**	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	0.99
7.1	4.2	3.9	3.7	3.5	3.2	3.0	2.8	2.7	2.5	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1.0	0.95
7.2	4.0	3.7	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2.0	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1.0	0.96	0.90
7.3	3.8	3.5	3.3	3.1	2.9	2.7	2.6	2.4	2.2	2.1	2.0	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1.0	0.97	0.91	0.85
7.4	3.5	3.3	3.1	2.9	2.7	2.5	2.4	2.2	2.1	2.0	1.8	1.7	1.6	1.5	1.4	1.3	1.3	1.2	1.1	1.0	0.96	0.90	0.85	0.79
7.5	3.2	3.0	2.8	2.7	2.5	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1.0	0.95	0.89	0.83	0.78	0.73
7.6	2.9	2.8	2.6	2.4	2.3	2.1	2.0	1.9	1.8	1.6	1.5	1.4	1.4	1.3	1.2	1.1	1.1	0.98	0.92	0.86	0.81	0.76	0.71	0.67
7.7	2.6	2.4	2.3	2.2	2.0	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	1.0	0.94	0.88	0.83	0.78	0.73	0.68	0.64	0.60
7.8	2.3	2.2	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1.0	0.95	0.89	0.84	0.79	0.74	0.69	0.65	0.61	0.57	0.53
7.9	2.1	1.9	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.2	1.1	1.0	0.95	0.89	0.84	0.79	0.74	0.69	0.65	0.61	0.57	0.53	0.50	0.47
8.0	1.8	1.7	1.6	1.5	1.4	1.3	1.2	1.1	1.1	1.0	0.94	0.88	0.83	0.78	0.73	0.68	0.64	0.60	0.56	0.53	0.50	0.44	0.44	0.41
8.1	1.5	1.5	1.4	1.3	1.2	1.1	1.1	0.99	0.92	0.87	0.81	0.76	0.71	0.67	0.63	0.59	0.55	0.52	0.49	0.46	0.43	0.40	0.38	0.35
8.2	1.3	1.2	1.2	1.1	1.0	0.96	0.90	0.84	0.79	0.74	0.70	0.65	0.61	0.57	0.54	0.50	0.47	0.44	0.42	0.39	0.37	0.34	0.32	0.30
8.3	1.1	1.1	0.99	0.93	0.87	0.82	0.76	0.72	0.67	0.63	0.59	0.55	0.52	0.49	0.46	0.43	0.40	0.38	0.35	0.33	0.31	0.29	0.27	0.26
8.4	0.95	0.89	0.84	0.79	0.74	0.69	0.65	0.61	0.57	0.53	0.50	0.47	0.44	0.41	0.39	0.36	0.34	0.32	0.30	0.28	0.26	0.25	0.23	0.22
8.5	0.80	0.75	0.71	0.67	0.62	0.58	0.55	0.51	0.48	0.45	0.42	0.40	0.37	0.35	0.33	0.31	0.29	0.27	0.25	0.24	0.22	0.21	0.20	0.18
8.6	0.68	0.64	0.60	0.56	0.53	0.49	0.46	0.43	0.41	0.38	0.36	0.33	0.31	0.29	0.28	0.26	0.24	0.23	0.21	0.20	0.19	0.18	0.16	0.15
8.7	0.57	0.54	0.51	0.47	0.44	0.42	0.39	0.37	0.34	0.32	0.30	0.28	0.27	0.25	0.23	0.22	0.21	0.19	0.18	0.17	0.16	0.15	0.14	0.13
8.8	0.49	0.46	0.43	0.40	0.38	0.35	0.33	0.31	0.29	0.27	0.26	0.24	0.23	0.21	0.20	0.19	0.17	0.16	0.15	0.14	0.13	0.13	0.12	0.11
8.9	0.42	0.39	0.37	0.34	0.32	0.30	0.28	0.27	0.25	0.23	0.22	0.21	0.19	0.18	0.17	0.16	0.15	0.14	0.13	0.12	0.12	0.11	0.10	0.09
9.0	0.36	0.34	0.32	0.30	0.28	0.26	0.24	0.23	0.21	0.20	0.19	0.18	0.17	0.16	0.15	0.14	0.13	0.12	0.11	0.11	0.10	0.09	0.09	0.08

(d) *pH criteria for fresh waters in Indian lands.* The pH of fresh waters shall fall within the range of 6.5 to 8.5.

(e) *Temperature criteria for tidal waters in Indian lands.* (1) The maximum acceptable cumulative increase in the weekly average temperature resulting from all artificial sources is 1 °C (1.8 °F) during all seasons of the year, provided that the summer maximum is not exceeded.

(i) Weekly average temperature increase shall be compared to baseline thermal conditions and shall be calculated using the daily maxima averaged over a 7-day period.

(ii) Baseline thermal conditions shall be measured at or modeled from a site where there is no artificial thermal addition from any source, and which is in reasonable proximity to the thermal discharge (within 5 miles), and which has similar hydrography to that of the receiving waters at the discharge.

(2) Natural temperature cycles characteristic of the water body segment shall not be altered in amplitude or frequency.

(3) During the summer months (for the period from May 15 through September 30), water temperatures shall not exceed a weekly average summer maximum threshold of 18 °C (64.4 °F) (calculated using the daily maxima averaged over a 7-day period).

(f) *Natural conditions provisions for waters in Indian lands.* (1) The provision in Title 38 of Maine Revised Statutes 464(4.C) which reads: "Where natural conditions, including, but not limited to, marshes, bogs and abnormal concentrations of wildlife cause the dissolved oxygen or other water quality criteria to fall below the minimum standards specified in section 465, 465–A and 465–B, those waters shall not be considered to be failing to attain their classification because of those natural conditions," does not apply to water quality criteria intended to protect human health.

(2) The provision in Title 38 of Maine Revised Statutes 420(2.A) which reads "Except as naturally occurs or as provided in paragraphs B and C, the board shall regulate toxic substances in the surface waters of the State at the levels set forth in federal water quality criteria as established by the United States Environmental Protection Agency pursuant to the Federal Water Pollution Control Act, Public Law 92–500, Section 304(a), as amended," does not apply to water quality criteria intended to protect human health.

(g) *Mixing zone policy for waters in Indian lands*—(1) *Establishing a mixing zone.* (i) The Department of Environmental Protection ("department") may establish a mixing zone for any discharge at the time of application for a waste discharge license if all of the requirements set forth in paragraphs (g)(2) and (3) of this section are satisfied. The department shall attach a description of the mixing zone as a condition of a license issued for that discharge. After opportunity for a hearing in accordance with 38 MRS section 345–A, the department may establish by order a mixing zone with respect to any discharge for which a license has been issued pursuant to section 414 or for which an exemption has been granted by virtue of 38 MRS section 413, subsection 2.

(ii) The purpose of a mixing zone is to allow a reasonable opportunity for dilution, diffusion or mixture of pollutants with the receiving waters such that an applicable criterion may be exceeded within a defined area of the waterbody while still protecting the designated use of the waterbody as a whole. In determining the extent of any mixing zone to be established under this section, the department will require from the applicant information concerning the nature and rate of the discharge; the nature and rate of existing discharges to the waterway; the size of the waterway and the rate of flow therein; any relevant seasonal, climatic, tidal and natural variations in such size, flow, nature and rate; the uses of the waterways that could be affected by the discharge, and such other and further evidence as in the department's judgment will enable it to establish a reasonable mixing zone for such discharge. An order establishing a mixing zone may provide that the extent thereof varies in order to take into account seasonal, climatic, tidal, and natural variations in the size and flow of, and the nature and rate of, discharges to the waterway.

(2) *Mixing zone information requirements.* At a minimum, any request for a mixing zone must:

(i) Describe the amount of dilution occurring at the boundaries of the proposed mixing zone and the size, shape, and location of the area of mixing, including the manner in which diffusion and dispersion occur;

(ii) Define the location at which discharge-induced mixing ceases;

(iii) Document the substrate character and geomorphology within the mixing zone;

(iv) Document background water quality concentrations;

(v) Address the following factors:

(A) Whether adjacent mixing zones overlap;

(B) Whether organisms would be attracted to the area of mixing as a result of the effluent character; and

(C) Whether the habitat supports endemic or naturally occurring species.

(vi) Provide all information necessary to demonstrate whether the requirements in paragraph (g)(3) of this section are satisfied.

(3) *Mixing zone requirements.* (i) Mixing zones shall be established consistent with the methodologies in Sections 4.3 and 4.4 of the "Technical Support Document for Water Quality-based Toxics Control" EPA/505/2–90–001, dated March 1991.

(ii) The mixing zone demonstration shall be based on the assumption that a pollutant does not degrade within the proposed mixing zone, unless:

(A) Scientifically valid field studies or other relevant information demonstrate that degradation of the pollutant is expected to occur under the full range of environmental conditions expected to be encountered; and

(B) Scientifically valid field studies or other relevant information address other factors that affect the level of pollutants in the water column including, but not limited to, resuspension of sediments, chemical speciation, and biological and chemical transformation.

(iii) Water quality within an authorized mixing zone is allowed to exceed chronic water quality criteria for those parameters approved by the department. Acute water quality criteria may be exceeded for such parameters within the zone of initial dilution inside the mixing zone. Acute criteria shall be met as close to the point of discharge as practicably attainable. Water quality criteria shall not be violated outside of the boundary of a mixing zone as a result of the discharge for which the mixing zone was authorized.

(iv) Mixing zones shall be as small as practicable. The concentrations of pollutants present shall be minimized and shall reflect the best practicable engineering design of the outfall to maximize initial mixing. Mixing zones shall not be authorized for bioaccumulative pollutants or bacteria.

(v) In addition to the requirements above, the department may approve a mixing zone only if the mixing zone:

(A) Is sized and located to ensure that there will be a continuous zone of passage that protects migrating, free-swimming, and drifting organisms;

(B) Will not result in thermal shock or loss of cold water habitat or otherwise interfere with biological communities or populations of indigenous species;

(C) Is not likely to jeopardize the continued existence of any endangered or threatened species listed under section 4 of the ESA or result in the destruction or adverse modification of such species' critical habitat;

(D) Will not extend to drinking water intakes and sources;

(E) Will not otherwise interfere with the designated or existing uses of the receiving water or downstream waters;

(F) Will not promote undesirable aquatic life or result in a dominance of nuisance species;

(G) Will not endanger critical areas such as breeding and spawning grounds, habitat for state-listed threatened or endangered species, areas with sensitive biota, shellfish beds, fisheries, and recreational areas;

(H) Will not contain pollutant concentrations that are lethal to mobile, migrating, and drifting organisms passing through the mixing zone;

(I) Will not contain pollutant concentrations that may cause significant human health risks considering likely pathways of exposure;

(J) Will not result in an overlap with another mixing zone;

(K) Will not attract aquatic life;

(L) Will not result in a shore-hugging plume; and

(M) Is free from:

(*1*) Substances that settle to form objectionable deposits;

(*2*) Floating debris, oil, scum, and other matter in concentrations that form nuisances; and

(*3*) Objectionable color, odor, taste, or turbidity.

(h) *Dissolved oxygen criteria for class A waters throughout the State of Maine, including in Indian lands.* The dissolved oxygen content of Class A waters shall not be less than 7 ppm (7 mg/L) or 75% of saturation, whichever is higher, year-round. For the period from October 1 through May 14, in fish spawning areas, the 7-day mean dissolved oxygen concentration shall not be less than 9.5 ppm (9.5 mg/L), and the 1-day minimum dissolved oxygen concentration shall not be less than 8 ppm (8.0 mg/L).

(i) *Waiver or modification of protection and improvement laws for waters throughout the State of Maine, including in Indian lands.* For all waters in Maine, the provisions in Title 38 of Maine Revised Statutes 363–D do not apply to state or federal water quality standards applicable to waters in Maine, including designated uses, criteria to protect existing and designated uses, and antidegradation policies.

(j) *Phenol criterion for the protection of human health for Maine Waters outside of Indian lands.* The phenol criterion to protect human health for the consumption of water and organisms is 4000 micrograms per liter.

[FR Doc. 2016–09025 Filed 4–19–16; 8:45 am]

BILLING CODE 6560–50–C

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 22, 24, 25, 27, 90, 95 and 101

[ET Docket No. 15–170; DA 16–348]

Incorporating the American National Standard for Compliance Testing of Transmitters Used in Licensed Radio Services (ANSI C63.26–2015) Into the Commission's Rules

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission acknowledges the publication of ANSI C63.26–2015 "American National Standard for Compliance Testing of Transmitters Used in Licensed Radio Services" and seeks comment on incorporating it into the Commission's rules by reference as part of an open rulemaking proceeding that addresses its equipment authorization (EA) rules and procedures. The standard was recently published and is now an "active standard"—that is, the standards association considers it to be valid, current, and approved.

DATES: Submit comments on or before May 5, 2016. Reply Comment Date: May 16, 2016.

ADDRESSES: Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*

Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington DC 20554. People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS. Documents will be available electronically in ASCII, Microsoft Word, and/or Adobe Acrobat.

FOR FURTHER INFORMATION CONTACT: Brian Butler, Office of Engineering and Technology, (202) 418–2702, email: *Brian.Butler@fcc.gov,* TTY (202) 418–2989.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's (Public Notice) ET Docket No 15–170, released April 1, 2016. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov.* People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Synopsis

By this Synopsis, we acknowledge the publication of ANSI C63.26–2015 "American National Standard for Compliance Testing of Transmitters Used in Licensed Radio Services," and seek comment on incorporating it into the Commission's rules by reference as part of an open rulemaking proceeding that addresses our equipment authorization (EA) rules and procedures. Comments and reply comments should be filed in the existing EA docket, ET Docket No. 15–170.

As background, ANSI C63.26 was developed by the ANSI ASC C63 in order to provide manufacturers and test laboratories with the reliable and consistent measurement procedures necessary to demonstrate that transmitters used in licensed radio services comply with the Commission's technical requirements. The standard was recently published and is now an "active standard"—that is, the standards association considers it to be valid, current, and approved.

The Commission, in the Notice of Proposed Rulemaking Docket 15–170 (EA NPRM), initiated an examination of ways to update and modernize the rules and procedures associated with the equipment authorization program for radiofrequency (RF) devices. In the EA NPRM, the Commission acknowledged the then-pending ANSI C63.26 standard, and observed that references to the applicable measurement procedures in ANSI C63.26 could replace measurement procedures set forth in the part 2 equipment authorization rules and referred to in many specific licensed service subparts. In particular, the Commission noted that section 2.947 of the rules states that it will accept data which has been measured in accordance with standards or measurement procedures acceptable to the Commission and published by national engineering societies.

ANSI C63.26 is particularly relevant to the testing of digital devices, since our existing rules mostly address older analog technologies, and the supplemental guidance for digital device measurements has generally been provided by OET on an *ad hoc* basis. Moreover, because the standard complements the ANSI C63.10 standard for measurement procedures for unlicensed devices (which the Commission recently incorporated by reference), the use of ANSI C63.26 would facilitate the testing of devices that contain both licensed and unlicensed transmitters.

In the EA NPRM, the Commission asked parties to "take the ANSI C63.26 standards development into account when drafting their comments," anticipated that it would "soon have to consider whether we should allow for the use of ANSI C63.26 once it has been adopted . . . and published," and proposed "to seek comment on incorporating the ANSI C63.26 into our rules as soon as the standard becomes final." As the standard has become final, and through this Public Notice, we seek comment on modifying section 2.910 of our rules, 47 CFR 2.910, to incorporate ANSI C63.26 by reference. By supplementing the record within existing Docket 15–170, the Commission will be able to consider the use of ANSI C63.26 as part of its comprehensive review of the EA process.

In addition to commenting on the potential adoption of ANSI C63.26 generally, commenters should address how the Commission would incorporate the standard into our existing rules, as discussed in the NPRM. For example, what are the specific part 2 measurement procedures that ANSI C63.26 would replace, and which individual service rules should be replaced with cross-references to part 2 (and, by extension, ANSI C63.26)? These filings should be made in ET Docket No. 15–170 within the pleading cycle time period listed above.

Incorporation by Reference. The OFR recently revised the regulations to require that agencies must discuss in the preamble of the rule ways that the materials the agency incorporates by reference are reasonably available to interested persons and how interested parties can obtain the materials. In addition, the preamble of the rule must summarize the material. 1 CFR 51.5(b). In accordance with OFR's requirements, the discussion in this section summarizes ANSI standards. Copies of the standards are available for purchase from these organizations: The Institute of Electrical and Electronic Engineers (IEEE), 3916 Ranchero Drive, Ann Arbor, MI 48108, 1–800–699–9277, *http://www.techstreet.com/ieee;* and the American National Standards Institute (ANSI), 25 West 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4900, *http://webstore.ansi.org/ansidocstore.*

ANSI C63.26–2015, "American National Standard for Compliance Testing of Transmitters Used in Licensed Radio Services," is ANSI approved and was published on January 15, 2016. The IBR previously proposed in 80 FR 46900 (2015) would also include this standard in multiple rule sections.

This standard, ANSI C63.26–2015, covers the procedures for testing a wide variety of licensed transmitters; including but not limited to transmitters operating under parts 22, 24, 25, 27, 90, 95 and 101 of the FCC Rules, transmitters subject to the general procedures in part 2 of the FCC Rules and procedures for transmitters not covered in the FCC Rules. The standard also addresses specific topics; *e.g.,* ERP/EIRP, average power measurements and instrumentation requirements.

Federal Communications Commission.

Ronald T. Repasi,

Deputy Chief, Office of Engineering and Technology.

[FR Doc. 2016–09058 Filed 4–19–16; 8:45 am]

BILLING CODE 6712–01–P

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

Submission for OMB Review; Comment Request

April 14, 2016.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Comments are requested regarding (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, Washington, DC; New Executive Office Building, 725—17th Street NW., Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602.

Comments regarding these information collections are best assured of having their full effect if received by May 20, 2016. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Local Food Directories and Survey (formerly Farmers Market Directory and Survey)

OMB Control Number: 0581–0169

Note: Burden from approved collection OMB 0581–0289 "Local Food Directories and Survey," is being merged with the renewal submission of 0581–0169. The title of 0581–0169 will be changed from "Farmers Market Directory and Survey" to "Local Food Directories and Survey."

Summary of Collection: The primary legislative basis for conducting farmer's market research is the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627). In addition, the Farmer-to-Consumer Direct Marketing Act of 1976 supports USDA's work to enhance the effectiveness of direct marketing, such as the development of modern farmers markets, the development of On-Farm Markets, Community Supported Agriculture (CSA) and Food Hubs. The Marketing Services Division (MSD), Agricultural Marketing Service (AMS) identifies marketing opportunities, provides analysis to help take advantage of those opportunities and develops and evaluates solutions including improving farmers markets and other direct-to-consumer marketing activities. Markets are maintained by State Departments of Agriculture, local public authorities, grower organizations and non-profit organizations.

Need and Use of the Information: The information will be collected using the form TM–6 "Farmers' Market Directory and Survey," the On-Farm Market Questionnaire, CSA Questionnaire, and the Food Hub Questionnaire. Each survey/questionnaire collects the data necessary to populate the USDA National Farmers Market Directory, and the other three direct to customer directories. Combining the collections will reduce the number of times that it seeks to make contact with market managers. Participating market managers are invited to participate in an optional National Farmers Market Managers Survey evaluating the farmer's market sector. These markets represent a varied range of sizes, geographical locations, types, ownership, structure, and will provide a valid overview of farmers markets in the United States. Information such as the size of market's, operating times and days, retail and wholesale sales, management structure, and rules and regulations governing the markets are all important questions that need to be answered in the design of a new market. The information developed by the Farmer's Market Survey will support better designs, development techniques, and operating methods for modern farmers markets and outline improvements that can be applied to revitalize existing markets. The three direct marketing channel directories along with the National Farmer's Market Directory Web site will provide synergies, give customers a one stop shopping Web site for a wide variety of locally produced directly marketed farm products, and provide a free advertising venue for agricultural enterprise managers seeking to diversify their farming operation by marketing directly to customers.

Description of Respondents: Not-for-profit institutions

Number of Respondents: 5,625

Frequency of Responses: Reporting: On occasion

Total Burden Hours: 1,619

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2016–09115 Filed 4–19–16; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Generic Clearance for Master Address File (MAF) and Topologically

Integrated Geographic Encoding and Referencing (TIGER) Update Activities.

OMB Control Number: 0607–0809.

Form Number(s): DF–31DA(E/S) Confidentiality Notice Listing and Mapping Application Screen Shots.

Type of Request: Regular submission.

Number of Respondents:

FY16: 60,000 HH, 2,000 GQs
FY17: 60,000 HH, 2,000 GQs
FY18: 60,000 HH, 2,000 GQs

Average Hours per Response: 3 min/HH; 10 min/GQs.

Burden Hours:

FY16: 3,333
FY17: 3,333
FY18: 3,333

Needs and Uses: The Census Bureau requests approval from the Office of Management and Budget (OMB) for an extension of the generic clearance for a number of activities it plans to conduct to update its Master Address File (MAF) and maintain the linkage between the MAF and the Topologically Integrated Geographic Encoding Referencing System (TIGER) of address ranges and associated geographic information. This MAF/TIGER database (MTdb) serves as the national repository for all of the spatial, geographic, and residential address data needed for census and survey data collection, data tabulation, data dissemination, geocoding services, and map production. The MAF contains all known living quarters and serves as the base of the census frame, to deliver questionnaires and postcards and to facilitate in-person data collection. The goal is to have each address in the MAF linked to a geographic location in TIGER, the Census Bureau's mapped spatial database. This linkage also ensures that the census data are processed and tabulated in the correct geographic location.

The Census Bureau established the first MAF/TIGER System to support the Census 2000 enumeration. The objective was to build and maintain a permanent housing unit address list and linked spatial database for future use. The 1990 Census Address Control File was the initial base for the MAF. The United States Postal Service (USPS) Delivery Sequence File (DSF) provided regular updates to the MAF in city-style address areas. Census 2000 frame operations were the first decennial census operations to update the MAF. Census 2000 enumeration operations supplied additional updates to the MAF.

After Census 2000, the advent of the American Community Survey (ACS), an ongoing census survey to collect community information, strengthened the need for MTdb updates throughout the decade. Between 2000 and 2010, the Census Bureau continued to use the USPS's DSF to update the MAF at least twice a year. In addition, the ACS established the Community Address Updating System, a program that provides field verified address updates to the MAF particularly in areas where the DSF is deficient. The Census Bureau used the addresses in the MTdb for the address frame for the 2010 Census and all frame-building operations and will do so again for the 2020 Census. These addresses are also used as a sampling frame for the American Community Survey and our other demographic current surveys. Maintenance activities for the MTdb are ongoing.

The generic clearance has proved to be very beneficial to the Census Bureau. The generic clearance has allowed us to utilize our limited resources on actual operational planning and development of procedures. The extension will be especially beneficial over the upcoming three years by enabling us to focus on the efforts to improve procedures and continue updating the MTdb for the 2020 Census and current surveys.

The Census Bureau will follow the protocol of past generic clearances: 30 days before the scheduled start date of each census activity, we will provide OMB with a detailed background on the activity, estimates of respondent burden and samples of pertinent forms. After the close of each fiscal year, we will also file a year-end summary report with OMB, presenting the results of each activity conducted.

The following sections describe the activities to be included under the clearance. The Census Bureau has conducted these activities (or similar ones) previously and the respondent burden remains relatively unchanged from one time to another. The estimated number of respondents is based on historical contact data and applied to the number of Census blocks in sample.

Demographic Area Address Listing (DAAL)

The Demographic Area Address Listing (DAAL) program encompasses the geographic area updates for the Community Address Updating System (CAUS) and the National Health Interview Survey, the area and group quarters (GQ) frame listings for many ongoing demographic surveys (the Current Population Survey, the Consumer Expenditures Survey, etc.), and any other operations that use the MTdb as a frame for data collection. As noted above, the CAUS program was designed to address quality concerns relating to areas with high concentrations of noncity-style addresses and to provide a rural counterpart to the update of city-style addresses the Census Bureau will receive from the U.S. Postal Service's DSF. The ongoing demographic surveys, as part of the 2000 Sample Redesign Program, use the MTdb as one of several sources of addresses from which they select their samples.

The DAAL program is a cooperative effort among many divisions at the Census Bureau; it includes automated listing software, systems, and procedures that allow us to conduct address listing operations in a dependent manner based on information contained in the MTdb. The DAAL operations are conducted on an ongoing basis in potentially any county across the country. Census Bureau field staff canvass selected 2010 Census tabulation blocks in an effort to improve the address list in areas where substantial address changes may have occurred that have not been added to the MTdb through regular update operations, and/or in blocks in the area or group quarters frame sample for the demographic surveys. Staff update existing information and, when necessary, contact individuals to collect accurate location and mailing address information. In general, contact with a household occurs only when the staff is adding a unit to the address list, there is a missing mailing address flag, and/or the individual's address is not posted or visible to the staff. There is no predetermined or scripted list of questions asked for households as part of this listing operation. If an address is not posted or visible to the staff, they inquire about the address of the structure, the mailing address, and in some instances, the year the structure was built. If the occupants of these households are not at home, the staff may attempt to contact a neighbor to obtain the correct address information. DAAL collects Group Quarters information from all GQs in the selected blocks, and although there is not a scripted list of questions, the staff will ask information about the GQ such as the number of beds, the GQ name, and so on.

DAAL is an ongoing operation. Listing assignments are distributed regularly, with the work conducted throughout the time period. We expect the DAAL listing operation will be conducted throughout the entire time period of the extension of this clearance.

MAF Coverage Study

The MAF Coverage Study (MAFCS) is planned as an ongoing Census Bureau effort to update the MTdb for current surveys and the Decennial Census, as well as to produce MTdb coverage estimates at national and sub-national levels. The coverage estimates produced as a result of the MAFCS design will allow the Census Bureau to establish a baseline coverage measure for the MTdb and yearly measures to assess the impacts of ongoing address updates on the MTdb. In addition to the traditional updates from the United States Postal Service and current surveys, the Census Bureau now continuously updates the MTdb with data from local data providers through the Geographic Support Systems (GSS). The MAFCS estimates will allow the Census Bureau to assess the updates from the GSS as well as other ongoing updates. MAFCS will leverage existing Census Bureau programs and systems to achieve these objectives. MAFCS data are collected by DAAL staff; hence, there will be a large increase to the DAAL operation workload.

During Fiscal Year 2016, the bulk of the production field data collection (18,500 blocks) will occur from April 2016 through September 2017. In subsequent fiscal years, the field data collection will be spread over a 12-month period from October through September. The MAFCS uses probabilistic sampling methods to select blocks to canvass in the United States (except remote areas of Alaska) and Puerto Rico. Blocks for Puerto Rico will be selected for Fiscal Year 2017 and canvassing will not begin until April 2017. Blocks that are known to include public lands, nonresidential military facilities, or only street medians are out of scope for the MAFCS.

The listed activities are not exhaustive of all activities that may be performed under this generic clearance. We will follow the approved procedure when submitting any additional activities not specifically listed here.

All activities described above directly support the Census Bureau's efforts to update the MTdb on a regular basis so that the most current MTdb will be available for use in conducting and evaluating statistical programs the Census Bureau undertakes on a monthly, annual, or periodic basis.

Affected Public: Individuals or households.

Frequency: Continuous throughout the three years.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 United States Code, Sections 141 and 193.

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: April 15, 2016.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2016–09101 Filed 4–19–16; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–520–803]

Polyethylene Terephthalate Film, Sheet and Strip From the United Arab Emirates: Partial Rescission of Antidumping Duty Administrative Review; 2014–2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* April 20, 2016.

FOR FURTHER INFORMATION CONTACT: Andrew Huston, Office VII, Antidumping and Countervailing Duty Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4261.

SUPPLEMENTARY INFORMATION:

Background

On November 3, 2015, the Department of Commerce (the Department) published a notice of opportunity to request an administrative review of the antidumping duty (AD) order on polyethylene terephthalate film, sheet and strip from the United Arab Emirates covering the period November 1, 2014, through October 31, 2015.[1] The Department received a timely request from Petitioners[2] for an AD administrative review of two companies: JBF RAK LLC (JBF) and Flex Middle East FZE (Flex).[3] In addition, Polyplex USA LLC and Flex Films (USA) Inc., domestic interested parties, submitted a timely request for an AD review of JBF,[4] and JBF submitted a timely request for an AD review of itself.[5] On January 7, 2016, pursuant to the requests from interested parties, the Department published a notice of initiation of administrative review with respect to Flex and JBF.[6] On March 29, 2016, Petitioners withdrew their requests for review of Flex.[7]

Rescission in Part

Pursuant to 19 CFR 351.213(d)(1), the Secretary will rescind an administrative review, in whole or in part, if a party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. The Department initiated the instant review on January 7, 2016 and Petitioners withdrew their request on March 29, 2016, which is within the 90-day period and thus is timely. Because Petitioners' withdrawal of their requests for review is timely and because no other party requested a review of Flex, we are rescinding this review, in part, with respect to Flex, in accordance with 19 CFR 351.213(d)(1). No party to the review withdrew their request for a review of JBF. As such, the instant review will continue with respect to JBF.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess anti-dumping duties on all appropriate entries. Subject merchandise of Flex will be assessed ADs at rates equal to the cash deposit of estimated ADs required at the time of entry, or withdrawal from warehouse, for consumption, during the period November 1, 2014, through October 31, 2015, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue assessment instructions to CBP 15 days after the date of publication of this notice.

Notification to Importers

This notice serves as a reminder to importers for whom this review is being rescinded, as of the publication date of this notice, of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of ADs prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the ADs occurred and the subsequent increase in the amount of ADs assessed.

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[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 80 FR 67706, 67707 (November 3, 2015).

[2] Petitioners are DuPont Teijin Films, Mitsubishi Polyester Film, Inc., and SKC, Inc.

[3] *See* Petitioners' letter, "Polyethylene Terephthalate (PET) Film, Sheet, and Strip from United Arab Emirates: Request for Antidumping Duty Administrative Review," dated November 30, 2015.

[4] *See* letter from Polyplex USA LLC and Flex Films (USA), Inc., "Polyethylene Terephthalate (PET) Film, Sheet, and Strip from United Arab Emirates: Request for Antidumping Administrative Review," dated November 30, 2015.

[5] *See* JBF's letter, "JBF RAK LLC/Request for A/D Administrative Review: Polyethylene Terephthalate (PET) Film, Sheet, and Strip from United Arab Emirates," dated November 30, 2015.

[6] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 736 (January 7, 2016). JBF's name was misspelled in the January 7, 2016 initiation notice, and was corrected in the subsequent initiation notice, *see Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 81 FR 6832, 6837 (February 9, 2016).

[7] *See* Petitioners' letter "Withdrawal of Request for Antidumping Duty Administrative Review," dated March 29, 2016.

Notification Regarding Administrative Protective Orders

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: April 13, 2016.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2016–09147 Filed 4–19–16; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–912]

Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2013–2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On October 9, 2015, the Department of Commerce ("Department") published the preliminary results of the administrative review of the antidumping duty order on certain new pneumatic off-the-road tires ("OTR tires") from the People's Republic of China ("PRC").[1] The period of review ("POR") is September 1, 2013, through August 31, 2014. Based on our analysis of the comments received, we made certain changes in the margin calculations. The final dumping margins for this review are listed in the "Final Results" section below.

DATES: *Effective Date:* April 20, 2016.

FOR FURTHER INFORMATION CONTACT: Andrew Medley or Amanda Mallott, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4987 and (202) 482–6430, respectively.

SUPPLEMENTARY INFORMATION:

Background

We conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act"). These final results of administrative review cover nine exporters of subject merchandise.[2] The Department finds that of these nine exporters, two mandatory respondents, Qingdao Qihang Tyre Co., Ltd. ("Qihang") and Xuzhou Xugong Tyres Co., Ltd. ("Xugong"),[3] made sales of subject merchandise at less than normal value ("NV"), and, an additional four companies, Qingdao Free Trade Zone Full-World International Trading Co., Ltd. ("Full-World"), Trelleborg Wheel Systems (Xingtai) China, Co. Ltd. ("TWS Xingtai") and Weihai Zhongwei Rubber Co., Ltd. ("Zhongwei"), and Tianjin Leviathan International Trade Co., Ltd. ("Leviathan"), demonstrated eligibility for separate rates status. Further, the Department determines that Zhongce Rubber Group Company Limited ("Zhongce") and Trelleborg Wheel Systems Hebei Co. ("TWS Hebei") had no shipments during the POR and Qingdao Haojia (Xinhai) Tyre Co. ("Haojia") failed to demonstrate eligibility for separate rate status.

On October 9, 2015, the Department published its *Preliminary Results* of the antidumping duty administrative review of OTR tires from the PRC and invited interested parties to comment on the preliminary results. We received case and rebuttal briefs from Titan Tire Corporation and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC ("Petitioners") and both Qihang and Xugong. We also received case briefs from TWS Xingtai. On March 17, 2016, the Department held a public hearing at the request of respondents and Petitioners. For a further discussion of the events that occurred in this investigation subsequent to the *Preliminary Results, see* the Issues and Decision Memorandum.[4] Also, as explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department exercised its authority to toll all administrative deadlines due to the recent closure of the Federal Government.[5] As a consequence, all deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the final results is now April 12, 2016. The Department conducted this review in accordance with 751 of the Act.

Scope of the Order

The merchandise covered by this order includes new pneumatic tires designed for off-the-road and off-highway use, subject to certain exceptions. The subject merchandise is currently classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheadings: 4011.20.10.25, 4011.20.10.35, 4011.20.50.30, 4011.20.50.50, 4011.61.00.00, 4011.62.00.00, 4011.63.00.00, 4011.69.00.00, 4011.92.00.00, 4011.93.40.00, 4011.93.80.00, 4011.94.40.00, and 4011.94.80.00. The HTSUS subheadings are provided for convenience and customs purposes only; the written product description of the scope of the order is dispositive.[6]

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[1] *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2013–2014*, 80 FR 61166 (October 9, 2015) ("*Preliminary Results*").

[2] We initiated a review of 12 companies. *See Initiation of Antidumping and Countervailing Duty Administrative Review*, 79 FR 64565 (October 30, 2014) ("*Initiation Notice*"). Double Coin Holdings Ltd. and its affiliate China Manufacturers Alliance (collectively, "Double Coin"), and Guizhou Tyre Co., Ltd. and its affiliate Guizhou Tyre Import and Export Co., Ltd. (collectively, "GTC"), timely withdrew their requests for review, and on February 24, 2015, the Department rescinded the review for Double Coin and GTC pursuant to 19 CFR 351.213(d)(1). *See Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Partial Rescission of Antidumping Duty Administrative Review; 2013–2014*, 80 FR 9695 (February 24, 2015).

[3] In the *Preliminary Results* we determined, in accordance with 19 CFR 351.401(f), to treat affiliated producers Xugong, Xuzhou Armour Rubber Company Ltd. ("Armour") and Xuzhou Hanbang Tyre Co., Ltd. ("Hanbang") as a single entity (collectively, "Xugong"). No party has challenged this collapsing decision.

[4] *See* Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, "Issues and Decision Memorandum for Final Results of Antidumping Duty Administrative Review: Certain New Pneumatic Off-the-Road Tires from the People's Republic of China; 2013–2014," dated concurrently with this notice ("Issues and Decision Memorandum").

[5] *See* Memorandum to the File from Ron Lorentzen, Acting A/S for Enforcement & Compliance, "Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas" dated January 27, 2016.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by parties in this review are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the issues that parties raised and to which we responded in the Issues and Decision Memorandum follows as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System ("ACCESS"). ACCESS is available to registered users at *http://access.trade.gov* and it is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/enforcement/*. The signed Issues and Decision Memorandum and electronic version of the Issues and Decision Memorandum are identical in content.

Final Determination of No Shipments

As noted in the *Preliminary Results,* we received a no-shipment certification from Zhongce and TWS Hebei.[7] Consistent with its practice, the Department asked U.S. Customs and Border Protection ("CBP") to conduct a query on potential shipments made by Zhongce and TWS Hebei during the POR; CBP did not provide any evidence contradicting the no-shipment claims.[8] No interested parties provided comments. Thus, based on Zhongce's and TWS Hebei's certifications and our analysis of CBP information, we determine that Zhongce and TWS Hebei did not have any reviewable transactions during the POR.

Final Determination of Affiliation and Collapsing

We continue to find that Xugong, Armour, and Hanbang are affiliated pursuant to section 771(33)(E) of the Act and should be collapsed together and treated as a single company (collectively, "Xugong"), pursuant to the criteria laid out in 19 CFR 351.401(f)(1)–(2).[9]

Separate Rates

In the *Preliminary Results,* we determined that Xugong, Qihang, Full-World, TWS Xingtai, Zhongwei, and Leviathan are eligible for separate-rate status; we also determined that Haojia was not eligible for a separate rate, and thus was part of the PRC-wide Entity.[10] We made no changes to these determinations for the final results.

Rate for Non-Examined Companies Which Are Eligible for a Separate Rate

The statute and the Department's regulations do not address the establishment of a rate to be applied to respondents not selected for individual examination when the Department limits its examination of companies subject to the administrative review pursuant to section 777A(c)(2)(B) of the Act. Generally, the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents not individually examined in an administrative review. Section 735(c)(5)(A) of the Act articulates a preference for not calculating an all-others rate using rates which are zero, *de minimis,* or based entirely on facts available ("FA").[11] Accordingly, the Department's usual practice has been to determine the dumping margin for companies not individually examined by averaging the weighted-average dumping margins for the individually examined respondents, excluding rates that are zero, *de minimis,* or based entirely on facts available.[12] Consistent with this practice, in this review, we have calculated weighted-average dumping margins for the two mandatory respondents Qihang and Xugong, and these dumping margins are above *de minimis* and are not based entirely on FA. Therefore, because we have publicly-ranged shipment data on the record from both Qihang and Xugong, we are assigning to Leviathan, Full-World, TWS Xingtai, and Zhongwei the weighted-average of the margins calculated for Qihang and Xugong, as the separate rate for this review.[13]

Changes Since the Preliminary Results

Based on an analysis of the comments received, we made certain calculation programming changes and revisions to the valuation of certain factors of production. For further details on the changes we made for these final results, see the Issues and Decision Memorandum. *See also* Memorandum to the File, "Final Results of the 2013–2014 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic off-The-Road Tires from the People's Republic of China: Surrogate Value Memorandum," dated concurrently with this notice; Memorandum to the File, "2013–2014 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Analysis of the Final Results Margin Calculation for Qingdao Qihang Tyre Co., Ltd.," dated concurrently with this notice; and Memorandum to the File, "2013–2014 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Analysis of the Final Results Margin Calculation for Xuzhou Xugong Tyres Co., Ltd.," dated concurrently with this notice.

Final Results

As a result of this administrative review, we determine that the following weighted-average dumping margins exist for the period September 1, 2013, through August 31, 2014:

Exporter	Weighted-average dumping margin (percent)
Xuzhou Xugong Tyres Co., Ltd., Armour Rubber Company Ltd., or Xuzhou Hanbang Tyre Co., Ltd	65.33
Qingdao Qihang Tyre Co., Ltd	79.86
Qingdao Free Trade Zone Full-World International Trading Co., Ltd	70.55
Tianjin Leviathan International Trade Co., Ltd	70.55
Trelleborg Wheel Systems (Xingtai) China, Co. Ltd	70.55

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[6] For a complete description of the scope of the order, *see* Issues and Decision Memorandum.

[7] *See Preliminary Results,* 80 FR at 61167.

[8] *See* CBP Message Number 5141301, dated May 21, 2015.

[9] *See Preliminary Results,* 80 FR at 61167. No party commented on this issue in their case briefs.

[10] *See Preliminary Results,* 80 FR at 61167–61168, and accompanying Preliminary Decision Memorandum at the "Separate Rates" section. No parties commented on this issue in their case briefs.

[11] *See Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Rescission of Reviews in Part,* 73 FR 52823, 52824 (September 11, 2008), and accompanying Issues and Decision Memorandum at Comment 16.

[12] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 72 FR 19690 (April 19, 2007).

[13] *See* Memorandum to the File, "2013–2014 Administrative Review of the Antidumping Duty Order on Certain New Pneumatic Off-the-Road Tires from the People's Republic of China: Final Results Margin Calculation for Separate Rate Companies," dated concurrently with this notice.

Exporter	Weighted-average dumping margin (percent)
Weihai Zhongwei Rubber Co., Ltd	70.55

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1).[14] The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

For customers or importers of Xugong and Qihang for which we do not have entered value, we calculated importer- (or customer-) specific antidumping duty assessment amounts based on the ratio of the total amount of dumping duties calculated for the examined sales of subject merchandise to the total sales quantity of those same sales.[15] For customers or importers of Xugong and Qihang for which we received entered-value information, we have calculated importer- (or customer-) specific antidumping duty assessment rates based on importer- (or customer-) specific *ad valorem* rates.[16] For the non-examined separate rate companies, we will instruct CBP to liquidate all appropriate entries at 70.55 percent. For the PRC-wide entity, we will instruct CBP to liquidate all appropriate entries at 105.31 percent.

Pursuant to a refinement in the Department's non-market economy ("NME") practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, the Department will instruct CBP to liquidate such entries at the NME-wide rate.[17] In addition, if the Department determines that an exporter under review had no shipments of subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.*, at that exporter's rate) will be liquidated at the NME-wide rate.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be equal to the weighted-average dumping margin identified in the "Final Results" section of this notice, above; (2) for previously investigated or reviewed PRC and non-PRC exporters that are not under review in this segment of the proceeding but that received a separate rate in a previous segment, the cash deposit rate will continue to be the exporter-specific rate (or exporter-producer chain rate) published for the most recently completed segment of this proceeding in which the exporter was reviewed; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 105.31 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter(s) that supplied that non-PRC exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding, in accordance with 19 CFR 351.224(b). We are issuing and publishing the final results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 12, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

Issues and Decision Memorandum

- Summary
- Background
- Scope of the Order
- List of Comments
- Discussion of the Issues

Comment 1: Whether Application of Adverse Facts Available Is Warranted With Regards to Certain Xugong Sales
Comment 2: Whether To Grant Qihang a Double Remedies Adjustment and What Pass-Through Rate to Use
Comment 3: Whether To Adjust Xugong's U.S. Prices for Irrecoverable VAT
Comment 4: Treatment of Xugong's Market Economy Purchases
Comment 5: Whether the Department Should Apply the Separate Rate Calculated in This Review to TWS Xingtai
Comment 6: Whether the Department Should Reject Certain Surrogate Values Submitted After the *Preliminary Results*
Comment 7: Surrogate Country
Comment 8: Financial Statements
Comment 9: Natural Rubber
Comment 10: Reclaimed Rubber
Comment 11: Inland Freight
Comment 12: Selection Surrogate Value for Carbon Black
Comment 13: Inadvertent Errors in Surrogate Value Selection
Comment 14: Selection of the Surrogate Values for #3 and #20 Compound Rubber, Activation Rubber Powder, Benzonic Acid, and Tire Cord Fabric

- Recommendation

[FR Doc. 2016–09165 Filed 4–19–16; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE574

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

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[14] *See Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8103 (February 14, 2012) ("*NME Antidumping Proceedings*").

[15] *See* 19 CFR 351.212(b)(1).

[16] *Id.*

[17] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties*, 76 FR 65694 (October 24, 2011).

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application contains all of the required information and warrants further consideration. This Exempted Fishing Permit would allow eight commercial fishing vessels to fish outside of the limited access sea scallop regulations in support of bycatch reduction research by using a bi-directional extended link apron.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

DATES: Comments must be received on or before May 5, 2016.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: nmfs.gar.efp@noaa.gov.* Include in the subject line "DA16–026 CFF Eco Friendly Dredge EFP."
- *Mail:* John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope " DA16–026 CFF Eco Friendly Dredge EFP."

FOR FURTHER INFORMATION CONTACT: Shannah Jaburek, Fisheries Management Specialist, 978–282–8456.

SUPPLEMENTARY INFORMATION: Coonamesset Farm Foundation (CFF) has submitted a proposal titled "Development of Ecosystem Friendly Scallop Dredge Bags: Tools for Long-Term Sustainability," that has been favorably reviewed and is pending final approval by NOAA's Grants Management Division under the 2016 Atlantic Sea Scallop Research Set-Aside (RSA) Program.

CFF submitted a complete application for an Exempted Fishing Permit (EFP) on March 10, 2016. The project would continue testing gear that reduces bycatch focusing on a bi-directional extended link apron which increases inter-ring spacing to improve escapement of small scallops and reduction in finfish bycatch.

CFF is requesting exemptions that would allow eight commercial fishing vessels be exempt from the Atlantic sea scallop days-at-sea (DAS) allocations at 50 CFR 648.53(b); crew size restrictions at § 648.51(c); Atlantic sea scallop observer program requirements at § 648.11(g); access area program requirements at § 648.60(a)(4), and rotational closed area exemptions for Closed Area I at § 648.58(a); Closed Area II at § 648.58(b), and Nantucket Lightship at § 648.58(c). The EFP would exempt participating vessels from possession limits and minimum size requirements specified in 50 CFR part 648, subsections B and D through O, for sampling purposes only. The EFP would also exempt one vessel from the scallop dredge gear restrictions for minimum ring and mesh size and use of a liner at § 648.51(b) in order to use a survey dredge set to the same specifications the NMFS uses for its yearly abundance survey. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Eight vessels would conduct scallop dredging in June 2016-May 2017, on a total of seven 7-day trips, for a total of 49 DAS. Each trip would complete approximately 50 tows for an overall total of 350 tows for the project. Trips would take place in the open areas of Southern New England and Georges Bank as well as in the Mid-Atlantic scallop access area and Georges Bank access areas that are currently closed. Four trips would be conducted in the Mid-Atlantic and southern New England, and three trips would be conducted on Georges Bank. Trips would be centralized around areas with high yellowtail and winter flounder bycatch and in areas with a high abundance of harvestable size scallops mixed with pre-recruit scallops.

Six trips would fish two 15-foot (4.57-m) Turtle Deflector Dredges, towed for a maximum duration of 30 minutes with a tow speed range of 4.8–5.1 knots. One dredge would be rigged with a standard linked bag while the other would be rigged with a bi-directional extended link apron. Standard linking is defined as a single link between ring spaces, and the extended link is defined as two links linked together between rings. Both dredges would use 4-inch (10.16-cm) rings and a 10-inch (25.40-cm) twine top. One trip would utilize the NMFS survey dredge on one side, which has specifications of 8-feet (2.44 m) wide with 2-inch (5.08-cm) rings and a 3.5-inch (8.89-cm) twine top with a 1.5-inch (3.81-cm) liner inserted inside. The project would use a combination of both the experimental and control dredge on the other side. This would allow the project to compare the absolute selectivity curves between the control and experimental dredges.

For all tows, the sea scallop catch would be counted into baskets and weighed. One basket from each dredge would be randomly selected and the scallops would be measured in 5-mm increments to determine size selectivity. Finfish catch would be sorted by species and then counted, weighed and measured in 1-mm increments. Depending on the volume of scallops and finfish captured, the catch would be subsampled as necessary. No catch would be retained for longer than needed to conduct sampling and no catch would be landed for sale.

PROJECT CATCH ESTIMATES IN POUNDS

Species	Number	Weight (pounds)	Weight (kilograms)
Scallops	250,000	100,000	45,359
Yellowtail Flounder	2,000	2,000	907
Winter Flounder	300	500	227
Windowpane Flounder	5,000	3,500	1,588
Monkfish	2,500	5,500	2,495
Summer Flounder	100	150	68
Barndoor Skate	500	500	227
Northeast Skate Complex	75,000	100,000	45,359

CFF needs these exemptions to allow them to conduct experimental dredge towing without being charged DAS, and to deploy gear in closed access areas where concentrations of primary bycatch species are sufficiently high to provide statistically robust results. Exemption from the dredge gear requirements would allow the project to tow the NMFS survey dredge, which does not conform with regulation. Participating vessels need crew size waivers to accommodate science personnel, and possession waivers will enable researchers to conduct finfish sampling activities. The project would be exempt from the sea scallop observer program requirements because activities conducted on the trip are not consistent with normal fishing operations.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 15, 2016.

Emily H. Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2016–09168 Filed 4–19–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE485

Notice of Availability of a Draft Programmatic Environmental Assessment for Fisheries and Ecosystem Research Conducted and Funded by the National Marine Fisheries Service, Southeast Fisheries Science Center

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of a Draft Programmatic Environmental Assessment; request for comments.

SUMMARY: NMFS announces the availability of the "Draft Programmatic Environmental Assessment (DPEA) for Fisheries and Ecosystem Research Conducted and Funded by the Southeast Fisheries Science Center (SEFSC)." Publication of this notice begins the official public comment period for this DPEA. The purpose of the DPEA is to evaluate, in compliance with the National Environmental Policy Act (NEPA), the potential direct, indirect, and cumulative impacts of conducting and funding fisheries and ecosystem research in the southeastern coast of the U.S., the Gulf of Mexico, and the Caribbean Sea marine waters of Puerto Rico and the U.S. Virgin Islands.

DATES: Comments and information must be received no later than May 20, 2016.

ADDRESSES: Comments on the DPEA should be addressed to: NOAA/NMFS/SEFSC/Director's Office, 75 Virginia Beach Drive, Key Biscayne, FL 33149. The mailbox address for providing email comments is *SEFSC.DPEA@noaa.gov.* NMFS is not responsible for email comments sent to addresses other than the one provided here. Comments sent via email, including all attachments, must not exceed a 10-megabyte file size. A copy of the DPEA may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.sefsc.noaa.gov/dpea.html*

Documents cited in this notice may also be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Dr. Melissa Cook, SEFSC, (228) 762–4591.

SUPPLEMENTARY INFORMATION: The Southeast Fisheries Science Center (SEFSC) is the research arm of National Marine Fisheries Service (NMFS) in the Southeast region of the U.S. The SEFSC conducts research and provides scientific advice to manage fisheries and conserve protected species in marine and estuarine habitats of the Atlantic Ocean along the southeastern coast of the U.S., the Gulf of Mexico, and the Caribbean Sea, including marine waters offshore from Puerto Rico and the U.S. Virgin Islands. Three regional Fishery Management Councils rely in part on data collected by the SEFSC. The South Atlantic Fishery Management Council (SAFMC), the Gulf of Mexico Fishery Management Council (GMFMC), and the Caribbean Fishery Management Council (CFMC) rely primarily on the SEFSC for fisheries independent research data for development of stock assessment reports and other management purposes. The SEFSC also provides research data and works cooperatively with numerous other domestic and international fisheries management organizations.

NMFS has prepared the DPEA under NEPA to evaluate several alternatives for conducting and funding fisheries and ecosystem research activities as the primary Federal action. Additionally in the DPEA, NMFS evaluates a related action—also called a "connected action" under 40 CFR 1508.25 of the Council on Environmental Quality's regulations for implementing the procedural provisions of NEPA (42 U.S.C. 4321 *et seq.*)—which is the proposed promulgation of regulations and authorization of the take of marine mammals incidental to the fisheries research under the Marine Mammal Protection Act (MMPA). Additionally, because the proposed research activities occur in areas inhabited by species of marine mammals, birds, sea turtles, and fish listed under the Endangered Species Act (ESA) as threatened or endangered, this DPEA evaluates activities that could result in unintentional takes of ESA-listed marine species.

The following four alternatives are currently evaluated in the DPEA:

- No-Action/Status Quo Alternative—Conduct Federal Fisheries and Ecosystem Research with Scope and Protocols Similar to Past Effort
- Preferred Alternative—Conduct Federal Fisheries and Ecosystem Research (New Suite of Research) with Mitigation for MMPA and ESA Compliance
- Modified Research Alternative—Conduct Federal Fisheries and Ecosystem Research (New Suite of Research) with Additional Mitigation
- No Research Alternative—No Fieldwork for Federal Fisheries and Ecosystem Research Conducted or Funded by SEFSC

The first three alternatives include a program of fisheries and ecosystem research projects conducted or funded by the SEFSC as the primary Federal action. Because this primary action is connected to a secondary Federal action (also called a connected action under NEPA), to consider authorizing incidental take of marine mammals under the MMPA, NMFS must identify as part of this evaluation "(t)he means of effecting the least practicable adverse impact on the species or stock and its habitat." (Section 101(a)(5)(A) of the MMPA [16 U.S.C. 1361 *et seq.*]). NMFS must therefore identify and evaluate a reasonable range of mitigation measures to minimize impacts to protected species that occur in SEFSC research areas. These mitigation measures are considered as part of the identified alternatives in order to evaluate their effectiveness to minimize potential adverse environmental impacts. The three action alternatives also include mitigation measures intended to minimize potentially adverse interactions with other protected species that occur within the action area. Protected species include all marine mammals, which are covered under the MMPA, all species listed under the ESA, and bird species protected under the Migratory Bird Treaty Act.

NMFS is also evaluating a second type of no-action alternative that considers no Federal funding for field fisheries and ecosystem research activities. This is called the No Research Alternative to distinguish it from the No-Action/Status Quo Alternative. The No-Action/Status Quo Alternative will be used as the baseline to compare all of the other alternatives. Potential direct and indirect effects on the environment are evaluated under each alternative in the DPEA. The environmental effects on the following resources are considered: Physical environment, special resource areas, fish, marine mammals, birds, sea turtles, invertebrates, and the social and economic environment. Cumulative effects of external actions and the contribution of fisheries research activities to the overall cumulative impact on the aforementioned resources is also evaluated in the DPEA for the three main geographic regions in which SEFSC surveys are conducted. NMFS requests comments on the DPEA for Fisheries and Ecosystem Research Conducted and Funded by the National Marine Fisheries Service, Southeast Fisheries Science Center. Please include, with your comments, any supporting data or literature citations that may be informative in substantiating your comment.

Dated: April 15, 2016.

Bonnie Ponwith,

Director, Southeast Fisheries Science Center, National Marine Fisheries Service.

[FR Doc. 2016–09154 Filed 4–19–16; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

[Docket ID: USA–2016–HQ–0014]

Proposed Collection; Comment Request

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Assistant Secretary of Defense for Civil Works announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 20, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* ODCMO, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Attn: Mailbox 24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the US Army Corps of Engineers, Institute for Water Resources, Casey Building, 8801 Telegraph Road, Alexandria VA 22315 ATTN Meredith Bridgers or call 703–428–8458.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Recreation Compendium of Questions Generic Clearance; OMB Control Number 0710–XXXX.

Needs and Uses: The information collection requirement is necessary for planning and feasibility studies; understanding of recreation visitor demands, experiences and facility use; input to recreation area management and operations; recreation visitation estimation; and economic estimates at US Army Corps of Engineers Water Resource Projects.

Affected Public: Individuals or households, business or other for-profit, not-for-profit institutions, and State, Local or Tribal Government.

Annual Burden Hours: 8,333 hours

Number of Respondents: 25,000

Responses per Respondent: 2

Annual Responses: 50,000

Average Burden per Response: 10 minutes (0.17 hours)

Frequency: On occasion.

Surveys developed from this generic clearance may be delivered by any of the following information collection formats, as well as others not mentioned herein: comment cards, paper surveys (on site, mail, email), web-based surveys, interviews (on site, telephone), or focus groups. Potential respondents may include current or future recreational visitors; regional residents; and stakeholders, state/local government agencies, and dependent industries or businesses that operate in or around USACE Water Resource Projects. Potential respondents may be contacted by mail, phone, or in person and invited to participate in the information collection. Respondents may access collection instruments via technology, paper, or by speaking to a USACE employee or representative. Respondents may return the collection instrument electronically, by paper mail, or orally. Appropriate disclosures (Privacy Act Statement) may be provided to the respondent visually (in writing on paper) or orally (in spoken word by a USACE employee or representative).

Dated: April 15, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–09109 Filed 4–19–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Policy Board; Notice of Federal Advisory Committee Meeting

AGENCY: Office of the Under Secretary of Defense (Policy), Department of Defense.

ACTION: Federal advisory committee meeting notice.

SUMMARY: The Department of Defense (DoD) is publishing this notice to announce the following Federal advisory committee meeting of the Defense Policy Board (DPB). This meeting will be closed to the public.

DATES: *Quarterly Meeting:* Monday, May 9, 2016, from 8:00 a.m. to 4:00 p.m.

ADDRESSES: The Pentagon, 2000 Defense Pentagon, Washington, DC 20301–2000.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Hansen, 2000 Defense Pentagon, Washington, DC 20301–2000. Phone: (703) 571–9232.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended) ("the Sunshine Act"), and the Federal Advisory Committee Management Act; Final Rule 41 CFR parts 101–6 and 102–3 ("the FACA Final Rule").

Purpose of Meeting: To obtain, review and evaluate classified information related to the DPB's mission to advise on: (a) Issues central to strategic DoD planning; (b) policy implications of U.S. force structure and force modernization and on DoD's ability to execute U.S. defense strategy; (c) U.S. regional defense policies; and (d) other research and analysis of topics raised by the Secretary of Defense, the Deputy Secretary or the Under Secretary of Defense for Policy.

Meeting Agenda: Beginning at 8:00 a.m. on May 9 the DPB will have secret through top secret (SCI) level discussions on national security issues regarding Iran.

Meeting Accessibility: Pursuant to the Sunshine Act, the FACA and the FACA Final Rule, the DoD has determined that this meeting shall be closed to the public. The Under Secretary of Defense (Policy), in consultation with the DoD FACA Attorney, has determined in writing that this meeting be closed to the public because the discussions fall under the purview of Section 552b(c)(1) of the Sunshine Act and are so inextricably intertwined with unclassified material that they cannot reasonably be segregated into separate discussions without disclosing secret or higher classified material.

Committee's Designated Federal Officer or Point of Contact: Ann Hansen, *osd.pentagon.ousd-policy.mbx.defense-board@mail.mil.*

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140(c) and section 10(a)(3) of the FACA, the public or interested organizations may submit written statements to the membership of the DPB at any time regarding its mission or in response to the stated agenda of a planned meeting. Written statements should be submitted to the DPB's Designated Federal Officer (DFO); the DFO's contact information is listed in this notice or it can be obtained from the GSA's FACA Database—*http://www.facadatabase.gov/.*

Written statements that do not pertain to a scheduled meeting of the DPB may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than five business days prior to the meeting in question. The DFO will review all submitted written statements and provide copies to all committee members.

Dated: April 15, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–09108 Filed 4–19–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2015–HA–0040]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by May 20, 2016.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Active Duty Dental Program (ADDP) Claim Form; OMB Control Number 0720–0053.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Number of Respondents: 75,000.

Responses per Respondent: 4.

Annual Responses: 300,000.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 75,000.

Needs and Uses: The information collection is necessary to obtain and record the dental readiness of Service Members using the Active Duty Dental Program (ADDP) and at the same time submit the claim for the dental procedures provided so that claims can be processed and reimbursement made to the provider. Many Service Members are not located near a military dental treatment facility and receive their dental care in the private sector.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Stephanie Tatham.

Comments and recommendations on the proposed information collection should be emailed to Ms. Stephanie Tatham, DoD Desk Officer, at *Oira_submission@omb.eop.gov.* Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: April 14, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–09076 Filed 4–19–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2012–HA–0165]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Assistant Secretary of Defense for Health Affairs announces a proposed public information collection and seeks public comment on the

provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 20, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* ODCMO, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Attn: Mailbox 24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information. Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Assistant Secretary of Defense for Health Affairs (OASD), Defense Health Agency, Tricare Dental Care Section, ATTN: COL James Honey, 7700 Arlington Blvd., 3M453, Falls Church, VA 22042, or call TRICARE Operations Division, at 703–681–8862.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Department of Defense Active Duty/Reserve Forces Dental Examination; DD Form 2813; OMB Number 0720–0022.

Needs and Uses: The information collection requirement is necessary to obtain and record the dental health status of members of the Armed Forces. This form is the means for civilian dentists to record the results of their findings and provide the information to the member's military organization. The military organizations are required by Department of Defense policy to track the dental status of its members.

Affected Public: Business or other for profit; Not-for-profit institutions.

Annual Burden Hours: 37,500.

Number of Respondents: 150,000.

Responses per Respondent: 5.

Annual Responses: 750,000.

Average Burden per Response: 3 minutes.

Frequency: Annually.

Respondents are medical professionals who provide dental services. Members of the Armed Forces of the United States are the recipients of the dental examination. The Armed Forces Reserve component members must maintain their dental health at a predetermined level so problems do not occur when they are deployed to a military operation. Reserve component members usually receive their dental care from civilian dentists; therefore it would be civilian dentists who would complete the form. Following a routine dental examination, the dentist would review the categories listed on the form and circle the number corresponding to the condition that best describes the dental health of the patient. If dental problems can be identified, they are indicated on the form. Once the form is complete and the dentist signs it, the members take the form back to the organization to which they belong. The information on the form is logged into a database. The form is kept in the health record until no longer needed and then it is destroyed.

Dated: April 15, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2016–09117 Filed 4–19–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2016–OS–0044]

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice to amend a System of Records.

SUMMARY: The Office of the Secretary of Defense proposes to amend a system of records, DWHS P18, entitled "Office of the Secretary of Defense Identification Badge System." The system is used by officials of the Military Personnel Division, Human Resources Directorate, Washington Headquarters Services to temporarily issue the badge at arrival and determine who is authorized permanent award after a one-year period and then prepare the certificate to recognize this event.

DATES: Comments will be accepted on or before May 20, 2016. This proposed action will be effective the date following the end of the comment period unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* ODCMO, Directorate for Oversight and Compliance, 4800 Mark Center Drive, Attn: Mailbox 24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at http://www.regulations.gov as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Cindy Allard, Chief, OSD/JS Privacy Office, 1155 Defense Pentagon, Washington, DC 20301–1155, or by phone at (571) 372–0461.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy and Civil Liberties Division Web site at *http://dpcld.defense.gov/.* The Office of the Secretary of Defense proposes to amend one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 14, 2016.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DWHS P18

SYSTEM NAME:

Office of the Secretary of Defense Identification Badge System (December 23, 2015, 80 FR 79867)

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with "In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

DISCLOSURE WHEN REQUESTING INFORMATION ROUTINE USE:

A record from a system of records maintained by a DoD Component may be disclosed as a routine use to a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a DoD Component decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

DISCLOSURE OF REQUESTED INFORMATION ROUTINE USE:

A record from a system of records maintained by a DoD Component may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

DISCLOSURE TO THE OFFICE OF PERSONNEL MANAGEMENT ROUTINE USE:

A record from a system of records subject to the Privacy Act and maintained by a DoD Component may be disclosed to the Office of Personnel Management (OPM) concerning information on pay and leave, benefits, retirement deduction, and any other information necessary for the OPM to carry out its legally authorized government-wide personnel management functions and studies.

DATA BREACH REMEDIATION PURPOSES ROUTINE USE:

A record from a system of records maintained by a Component may be disclosed to appropriate agencies, entities, and persons when (1) the Component suspects or has confirmed that the security or confidentiality of the information in the system of records has been compromised; (2) the Component has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Component or another agency or entity) that rely upon the compromised information; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Components efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

The DoD Blanket Routine Uses set forth at the beginning of the Office of the Secretary of Defense (OSD) compilation of systems of records notices may apply to this system. The complete list of DoD Blanket Routine Uses can be found online at: *http://dpcld.defense.gov/Privacy/SORNsIndex/BlanketRoutineUses.aspx.*"

* * * * *

[FR Doc. 2016–09083 Filed 4–19–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2009–OS–0160]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition, Technology and Logistics.

ACTION: Notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Acquisition, Technology and Logistics announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 20, 2016.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* ODCMO, Directorate for Oversight and Compliance, 4800 Mark Center Drive, ATTN: Mailbox 24, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense for Acquisition, Technology and Logistics (OUSD AT&L), Manufacturing and Industrial Based Policy (MIBP), ATTN: Jonathan Wright, Alexandria, VA 22350–6500, or call MIBP, at 571–372–6271.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Industrial Capabilities Questionnaire; DD Form 2737; OMB Control Number 0704–0377.

Needs and Uses: The information collection requirement is necessary to provide the adequate industrial capability analyses to indicate a diverse, healthy, and competitive industrial base capable of meeting Department demands. Additionally, the information is required to perform the industrial assessments required by Chapter 148, section 2502 of Title 10 of the U.S. Code; and to support development of a defense industrial base information system as required by Section 722 of the 1992 Defense Production Act, as amended, and Section 802 of Executive Order 12919.

Affected Public: Business or other for profit; Not-for-profit institutions.

Annual Burden Hours: 153,600.

Number of Respondents: 12,800.

Responses per Respondent: 1.

Annual Responses: 12,800.

Average Burden per Response: 12 hours.

Frequency: Annually.

Respondents are companies/facilities specifically identified as being of interest to the Department of Defense. Industrial Capabilities Questionnaire DD Form 2737 records pertinent information needed to conduct industrial base analysis for senior DoD leadership to ensure a robust defense industrial base to support the warfighter.

Dated: April 15, 2016.

Aaron Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2016–09176 Filed 4–19–16; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Arlington National Cemetery Southern Expansion Project and Associated Roadway Realignment, NEPA Scoping Meeting and Public Comment Period

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: NEPA scoping meeting and public comment period.

SUMMARY: Pursuant to the requirements of the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. 4321–4370, as implemented by the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), the U.S. Army Corps of Engineers (USACE), on behalf of the Arlington National Cemetery (ANC), plans to prepare an Environmental Assessment (EA) to evaluate environmental impacts from reasonable project alternatives and to determine the potential for significant impacts related to the proposed ANC Southern Expansion Project and Associated Roadway Realignment. If the ANC and the USACE determine that there is a potential for a significant environmental impact, the USACE will issue a Notice of Intent to prepare an Environmental Impact Statement (EIS) in the **Federal Register**.

DATES: Scoping comments may be submitted until May 31, 2016.

ADDRESSES: The public is invited to submit NEPA scoping comments to Ms. Kathy Perdue, Department of the Army, U.S. Army Corps of Engineers, Norfolk District, Planning and Policy Branch, 803 Front St., Norfolk, VA 23510 or via email: *SouthernExpansion@usace.army.mil.* The Project title and the commenter's contact information should be included with submitted comments.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Perdue, (757) 201–7218.

SUPPLEMENTARY INFORMATION: The ANC is the lead federal agency for this Project, and the USACE is preparing the NEPA documents on its behalf, assisted by the HNTB Corporation. The Federal Highway Administration (FHWA), the Environmental Protection Agency (EPA), the National Capital Planning Commission (NCPC), the Virginia Department of Transportation (VDOT), and Arlington County will serve as cooperating agencies during the NEPA process. The ANC and the USACE will also consider the input of various stakeholder organizations and the public.

ANC is located within the eastern boundary of Arlington County, in the northeastern corner of the Commonwealth of Virginia, and at the western terminus of Memorial Avenue, directly across the Arlington Memorial Bridge and the Potomac River from the District of Columbia (Washington DC). ANC is a 624-acre national military shrine that is the final resting place for over 400,000 active duty service members, veterans, and their families. The proposed Southern Expansion site, approximately 37 acres in size, encompasses four parcels of land, including the former Navy Annex site. The parcels are bounded on the south by Interstate 395 (I–395), on the north by Southgate Road, on the west by the Foxcroft Heights neighborhood and the VDOT Maintenance Yard, and on the east by Washington Boulevard (Route 27).

The EA will evaluate reasonable alternatives and potential impacts of the Southern Expansion Project and associated roadway realignments and land exchange agreement. The objectives (purpose) for the proposed action are:

- To create an expansion area contiguous with the ANC through the replacement of Southgate Road with a new South Nash Street and realignment of Columbia Pike and the Columbia Pike/Washington Boulevard interchange (adjacent to the Pentagon);
- To maximize the number of burial plots for first interments and inurnments;
- To reconfigure the roadways to support the short- and long-term multimodal transportation system needs and goals for the Commonwealth of Virginia and Arlington County;
- To maintain access to the Air Force Memorial and to create public access for the proposed 9/11 Pentagon Memorial Visitor Education Center; and
- To identify environmental and cultural resources in the Project area and potential impacts to those resources from the Project.

Scoping/Public Involvement. The public NEPA scoping meeting will be held on April 27, 2016, from 5 p.m.–9 p.m., at the Sheraton Pentagon City Hotel, 900 S. Orme Street, Arlington, VA 22204. Federal, state, and local agencies, Indian tribes, and the public are invited to provide scoping comments to identify issues and potentially significant effects to be considered in the analysis.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2016–09053 Filed 4–19–16; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0046]

Agency Information Collection Activities; Comment Request; Trends in International Mathematics and Science Study (TIMSS 2019) Pilot Test Recruitment

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before June 20, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0046. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, 2E–105, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela at *kashka.kubzdela@ed.gov.*

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Trends in International Mathematics and Science Study (TIMSS 2019) Pilot Test Recruitment.

OMB Control Number: 1850–0695.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 1,119.

Total Estimated Number of Annual Burden Hours: 274.

Abstract: The Trends in Mathematics and Science Study (TIMSS) is an international assessment of fourth and eighth grade students' achievement in mathematics and science. Since its inception in 1995, TIMSS has continued to assess students every 4 years. The United States will participate in TIMSS 2019 to continue to monitor the progress of its students compared to that of other nations and to provide data on factors that may influence student achievement. New in 2019, TIMSS will be a technology-based assessment conducted in an electronic format. TIMSS is designed by the International Association for the Evaluation of Educational Achievement (IEA), and is conducted in the U.S. by the National Center for Education Statistics (NCES). In preparation for the TIMSS 2019 main study, in April 2017, U.S. will participate in a pilot study to assist in the development of eTIMSS, and then U.S. will implement a field test, from March through April 2018, to evaluate new assessment items and background questions. This submission describes the plans for recruiting schools, teachers, and students for the pilot study beginning in October 2016. Recruitment for the field test will begin in May 2017, and recruitment for the main study in May of 2018. In the summer of 2016, NCES will submit a separate request for the pilot data collection and recruitment for the 2018 field test, including draft versions of the pilot test questionnaires.

Dated: April 15, 2016.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2016–09099 Filed 4–19–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2016–ICCD–0045]

Agency Information Collection Activities; Comment Request; Direct Loan, FFEL, Perkins and TEACH Grant Total and Permanent Disability Discharge Application and Related Forms

AGENCY: Federal Student Aid (FSA), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before June 20, 2016.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2016–ICCD–0045. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E–105, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Jon Utz, 202–377–4040.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Direct Loan, FFEL, Perkins and TEACH Grant Total and

Permanent Disability Discharge Application and Related Forms.

OMB Control Number: 1845–0065.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 254,800.

Total Estimated Number of Annual Burden Hours: 127,400.

Abstract: The Discharge Application: Total and Permanent Disability serves as the means by which an individual who is totally and permanently disabled, as defined in section 437(a) of the Higher Education Act of 1965, as amended, applies for discharge of his or her Direct Loan, FFEL, or Perkins loan program loans, or TEACH Grant service obligation. The form collects the information that is needed by the U.S. Department of Education (the Department) to determine the individual's eligibility for discharge based on total and permanent disability. The Total and Permanent Disability Discharge: Post-Discharge Monitoring form serves as the means by which an individual who has received a total and permanent disability discharge provides the Department with information about his or her annual earnings from employment during the 3-year post-discharge monitoring period that begins on the date of discharge. The Total and Permanent Disability Discharge: Applicant Representative Designation form serves as the means by which an applicant for a total and permanent disability discharge may (1) designate a representative to act on his or her behalf in connection with the applicant's discharge request, (2) change a previously designated representative, or (3) revode a previous designation of a representative.

Dated: April 15, 2016.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2016–09100 Filed 4–19–16; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years an information collection request with the Office of Management and Budget (OMB). Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before June 20, 2016. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Written comments may be sent to Scott Whiteford at 202–287–1563 or by fax at 202–287–1656 or by email at *scott.whiteford@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to by email at *scott.whiteford@hq.doe.gov.*

Information for the Excess Personal Property Furnished to Non-Federal Recipients and the Exchange/Sale Report is collected using GSA's Personal Property Reporting Tool and can be found at the following link: *https://gsa.inl.gov/property/.*

Information for the Federal Fleet Report is collected using the Federal Automotive Statistical Tool and can be found at the following link: *https://fastweb.inel.gov/.*

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. 1910–1000; (2) Information Collection Request Title: Exchange/Sale Report, Excess Personal Property Furnished to Non-Federal Recipients, Federal Automotive Statistical Tool Report; (3) Type of Review: Renewal; (4) Purpose: The information being collected is data required in order to submit annual personal property reports as required by 41 CFR part 102 and the Office of Management and Budget. Respondents to this information collection request will be the Department of Energy's Management and Operating Contractor and other major site contractors; (5) Annual Estimated Number of Total Respondents: 76 respondents for each of the three reports; (6) Annual Estimated Number of Total Responses: 228 (76 respondents × 3 reports); (7) Total annual estimated number of burden hours is 1,672. A breakout of burden hours for each report is listed below:

○ Exchange/Sale 2 hours with 76 respondents

○ Non-Federal Recipient Report are estimated at 2 hours for 76 estimated

○ Federal Automotive Statistical Tool at 18 hours for each of the 76 estimated respondents, for a total of 1,368 burden hours.

(8) Annual Estimated Reporting and Recordkeeping Cost Burden is $133,760.

Authority: (A) 41 CFR 102–39.85, (B) 41 CFR 102–36.295 and 102–36.300, (C) OMB Circular A–11 section 25.5, (D) 41 CFR 102–34.335.

Issued in Washington, DC on April 14, 2016.

Carmelo Melendez,

Director, Office of Asset Management.

[FR Doc. 2016–09125 Filed 4–19–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–419]

Application to Export Electric Energy; MXTREP #1, LLC

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: MEXTREP #1, LLC (Applicant or MEXTREP) has applied for authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before May 20, 2016.

ADDRESSES: Comments, protests, motions to intervene, or requests for more information should be addressed to: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Electricity.Exports@hq.doe.gov,* or by facsimile to 202–586–8008.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the

Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C.§ 824a(e)).

On March 31, 2016, DOE received an application from MEXTREP for authority to transmit electric energy from the United States to Mexico as a power marketer for a five-year term using existing international transmission facilities.

In its application, MEXTREP states that it does not own or control any electric generation or transmission facilities, and it does not have a franchised service area. The electric energy that MEXTREP proposes to export to Mexico would be surplus energy purchased from third parties such as electric utilities and Federal power marketing agencies pursuant to voluntary agreements. The existing international transmission facilities to be utilized by the Applicant have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments and other filings concerning MEXTREP's application to export electric energy to Mexico should be clearly marked with OE Docket No. EA–419. An additional copy is to be provided to Boone Nerren, MEXTREP#1, LLC, 16200 Dallas Parkway, Suite 245, Dallas, TX 75248.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845*, or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Issued in Washington, DC, on April 14, 2016.

Brian Mills,

Senior Planning Advisor, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2016–09127 Filed 4–19–16; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

TIME AND DATE: April 21, 2016, 10 a.m.

PLACE: Room 2C, 888 First Street NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* NOTE—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

1026TH—MEETING

[Regular Meeting; April 21, 2016; 10:00 a.m.]

Item No.	Docket No.	Company
		ADMINISTRATIVE
A–1	AD16–1–000	Agency Administrative Matters.
A–2	AD16–7–000	Customer Matters, Reliability, Security and Market Operations.
A–3	AD16–19–000	National Labs Panel on Grid Modernization.
A–4	AD16–20–000	Electric Storage Participation in Regions with Organized Wholesale Electric Markets.
		ELECTRIC
E–1	EL12–80–001	Exelon Wind 1, LLC.
	QF05–114–004	
	QF05–116–004	Exelon Wind 2, LLC.
	QF05–115–004	Exelon Wind 3, LLC.
	QF03–13–005	Exelon Wind 4, LLC.
	QF06–289–004	Exelon Wind 5 LLC.
	QF06–290–004	Exelon Wind 6, LLC.
	QF07–46–004	Exelon Wind 7, LLC.
	QF07–53–004	Exelon Wind 8, LLC.
	QF07–54–004	Exelon Wind 9, LLC
	QF07–55–004	Exelon Wind 10, LLC.
	QF07–56–004	Exelon Wind 11, LLC.
	QF07–257–003	High Plains Wind Power, LLC.
E–2	EL14–28–000	Occidental Chemical Corporation.
	QF00–64–002	
E–3	EL13–41–000	Occidental Chemical Corporation v. Midwest Independent Transmission System Operator, Inc.

1026TH—MEETING—Continued

[Regular Meeting; April 21, 2016; 10:00 a.m.]

Item No.	Docket No.	Company
E–4	EL13–88–000	Northern Indiana Public Service Company v. Midcontinent Independent System Operator, Inc. and PJM Interconnection, LLC.
E–5	EL14–20–000	Independent Market Monitor for PJM v. PJM Interconnection, LLC.
E–6	EL12–54–000	Viridity Energy, Inc. v. PJM Interconnection, LLC.
E–7	EF15–10–000	Western Area Power Administration.
E–8	QM14–3–001	Entergy Services, Inc. Entergy Arkansas, Inc. Entergy Gulf States Louisiana, LLC. Entergy Louisiana, LLC. Entergy Mississippi, Inc. Entergy New Orleans, Inc. Entergy Texas, Inc.
E–9	ER14–2850–004 ER14–2851–004	Southwest Power Pool, Inc.
E–10	OMITTED	
E–11	OMITTED	
E–12	ER11–2275–003	Midwest Independent Transmission System Operator, Inc.
E–13	ER15–952–001	New Jersey Energy Associates, a Limited Partnership.
E–14	ER16–763–000	NorthWestern Corporation.
E–15	ER15–1861–001 ER15–1862–001	Tucson Electric Power Company.
E–16	ER15–553–001	San Diego Gas & Electric Company.
E–17	ER16–866–000	MDU Resources Group, Inc.
E–18	EL09–61–003	Louisiana Public Service Commission v. Entergy Corporation, Entergy Services, Inc., Entergy Louisiana, LLC, Entergy Arkansas, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Gulf States Louisiana, LLC and Entergy Texas, Inc.
E–19	EL09–61–002	Louisiana Public Service Commission v. Entergy Corporation, Entergy Services, Inc., Entergy Louisiana, LLC, Entergy Arkansas, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Gulf States Louisiana, LLC and Entergy Texas, Inc.
E–20	OMITTED	
E–21	ER14–822–002 ER14–822–003	PJM Interconnection, LLC.
E–22	ER14–504–001	PJM Interconnection, LLC.
E–23	ER13–2108–001	PJM Interconnection, LLC.
E–24	OMITTED	
E–25	ER09–411–005	Midwest Independent Transmission System Operator, Inc.
E–26	ER11–2275–002	Midwest Independent Transmission System Operator, Inc.
E–27	OMITTED	
E–28	EL07–86–012	Ameren Services Company and Northern Indiana Public Service Company v. Midwest Independent Transmission System Operator, Inc.
	EL07–88–012	Great Lakes Utilities. Indiana Municipal Power Agency. Missouri Joint Municipal Electric Utility Commission. Missouri River Energy Services. Prairie Power, Inc. Southern Minnesota Municipal Power Agency. Wisconsin Public Power Inc. v. Midwest Independent Transmission System Operator, Inc.
	EL07–92–012	Wabash Valley Power Association, Inc. v. Midwest Independent Transmission System Operator, Inc.
E–29	OMITTED	
E–30	EL16–41–000	Morongo Transmission LLC.
E–31	EL14–66–003	E.ON Climate & Renewables North America LLC. Pioneer Trail Wind Farm, LLC. Settlers Trail Wind Farm, LLC v. Northern Indiana Public Service Company.
E–32	EL16–29–000	North Carolina Electric Membership Corporation. North Carolina Municipal Power Agency Number 1. Piedmont Municipal Power Agency. City of Concord, NC. City of Kings Mountain, NC v. Duke Energy Carolinas, LLC.
	EL16–30–000	North Carolina Electric Membership Corporation. North Carolina Eastern Municipal Power Agency. Fayetteville Public Works Commission v. Duke Energy Progress, LLC.
E–33	EL12–60–001	Southwest Power Pool, Inc. Western Area Power Administration. Basin Electric Power Cooperative. Heartland Consumers Power District.
	ER12–1586–002 ER12–1586–003	Southwest Power Pool, Inc.
E–34	ER16–120–000 EL15–37–001	New York Independent System Operator, Inc.

1026TH—MEETING—Continued

[Regular Meeting; April 21, 2016; 10:00 a.m.]

Item No.	Docket No.	Company
GAS		
G–1	RP13–743–004	ANR Pipeline Company and Great Lakes Gas Transmission Limited Partnership.
	RP15–138–002	
	RP15–139–002 (Consolidated)	
	RP14–650–000	
	RP14–650–001	
	RP15–785–000 (Not Consolidated)	
G–2	OR14–17–001	Colonial Pipeline Company.
G–3	OR13–3–000	Buckeye Pipe Line Company, LP.
G–4	IS09–348–011	BP Pipelines (Alaska) Inc.
	IS09–395–011	
	IS10–204–010	
	IS10–491–000	
	IS10–491–006	
	IS09–384–010	ConocoPhillips Transportation Alaska, Inc.
	IS10–205–009	
	IS10–476–000	
	IS10–476–006	
	IS09–391–010	ExxonMobil Pipeline Company.
	IS09–177–012	
	IS10–200–009	
	IS10–547–000	
	IS10–547–005	
	IS10–54–008	Koch Alaska Pipeline Company, LLC.
	IS10–496–000	
	IS10–496–006	
	IS09–176–011	Unocal Pipeline Company.
	IS07–41–009	
	IS08–53–009	
	IS10–52–008	
	OR10–3–009	
	IS10–490–000	
	IS10–490–005	
	IS11–3–000	
	IS11–3–004	
G–5	IS11–335–000	BP Pipelines (Alaska) Inc.
	IS12–458–000	
	IS13–62–000	
	IS13–108–000	
	IS13–506–000	
	IS15–88–000	
	IS16–76–000	
	IS11–306–000	ConocoPhillips Transportation Alaska, Inc.
	IS12–498–000	
	IS13–480–000	
	IS13–125–000	
	IS14–596–000	
	IS15–522–000	
	IS11–336–000	ExxonMobil Pipeline Company.
	IS12–397–000	
	IS13–55–000	
	IS13–496–000	
	IS14–575–000	
	IS15–580–000	
	IS11–546–000	Unocal Pipeline Company.
	IS11–328–000	Koch Alaska Pipeline Company, LLC.
G–6	IS15–522–001	ConocoPhillips Transportation Alaska, Inc.
	IS11–306–003, *et al.* (Consolidated)	ConocoPhillips Transportation Alaska, Inc.
G–7	IS15–580–001	ExxonMobil Pipeline Company.
	IS11–306–004, *et al.* (Consolidated)	ConocoPhillips Transportation Alaska, Inc.
HYDRO		
H–1	P–13287–004	City of New York, New York.
H–2	P–14316–002	Columbia Basin Hydropower.
	P–14318–002	

1026TH—MEETING—Continued

[Regular Meeting; April 21, 2016; 10:00 a.m.]

Item No.	Docket No.	Company
	P–14349–002	
	P–14351–002	
H–3	P–13333–005	Public Utility District No. 1 of Klickitat County, Washington.
	P–14729–001	Clean Power Development, LLC.
H–4	P–7856–027	Willow Creek Hydro, LLC.
H–5	P–2146–141	Alabama Power Company.
	CERTIFICATES	
C–1	CP16–1–000	Dominion Transmission, Inc.

Issued: April 14, 2016.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

A free webcast of this event is available through *www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. 2016–09256 Filed 4–18–16; 4:15 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER16–1407–000.

Applicants: Midcontinent Independent System Operator, Inc., Ameren Illinois Company.

Description: § 205(d) Rate Filing: 2016–04–14_SA 2880 Attachment A Project Specs (Ameren-Wabash Valley Power UCA) to be effective 3/30/2016.

Filed Date: 4/14/16.

Accession Number: 20160414–5130.

Comments Due: 5 p.m. ET 5/5/16.

Docket Numbers: ER16–1408–000.

Applicants: Nevada Power Company.

Description: Initial rate filing: Rate Schedule No. 153 NPC/Aha Macav Interconection and TSA Agr. to be effective 4/15/2016.

Filed Date: 4/14/16.

Accession Number: 20160414–5154.

Comments Due: 5 p.m. ET 5/5/16.

Docket Numbers: ER16–1409–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: 2016 Revised Added Facilities Rate under WDAT—Filing No. 4 to be effective 1/1/2016.

Filed Date: 4/14/16.

Accession Number: 20160414–5158.

Comments Due: 5 p.m. ET 5/5/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 14, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–09090 Filed 4–19–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP15–115–000; CP15–115–001]

National Fuel Gas Supply Corporation, Empire Pipeline, Inc.; Notice of Schedule for Environmental Review of the Northern Access 2016 Project

On March 17, 2015, National Fuel Gas Supply Corporation (National Fuel) and Empire Pipeline, Inc. (Empire) (collectively referred to as National Fuel) filed an application in Docket No. CP15–115–000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(c) of the Natural Gas Act to construct and operate certain natural gas pipeline facilities in Pennsylvania and New York. National Fuel amended its application on November 4, 2015. The proposed project is known as the Northern Access 2016 Project (Project), and would expand the National Fuel pipeline system to provide 497,000 dekatherms per day of new firm natural gas transportation capacity and the Empire pipeline system to provide 350,000 dekatherms per day of new firm natural gas transportation capacity.

On March 27, 2015, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's Environmental Assessment (EA) for the Project. This instant notice identifies the FERC staff's planned schedule for the completion of the EA for the Project.

Schedule for Environmental Review

Issuance of EA—July 27, 2016

90-day Federal Authorization Decision Deadline—October 25, 2016

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

The Project involves the construction and operation of certain facilities to provide natural gas transportation service from a receipt point in McKean County, Pennsylvania to an existing Empire pipeline system in Niagara County, New York.

National Fuel's proposed facilities include: Installation of about 96.9 miles of new 24-inch-diameter natural gas pipeline in McKean County, Pennsylvania and Cattaraugus and Erie Counties, New York; modifications at the existing Porterville Compressor Station in Erie County; addition or modification of interconnect/tie-in facilities; addition of 13 mainline valve sites; and cathodic protection facilities.

Empire's proposed facilities in Niagara County include: The new Pendleton Compressor Station; 2.1 miles of new 24-inch-diameter pipeline for the compressor station; the new Wheatfield Dehydration Facility; construction/modification of tie-in facilities; and removal of an existing meter and odorizer station.

Background

On October 22, 2014, the Commission issued a *Notice of Intent to Prepare an Environmental Assessment for the Planned Northern Access 2016 Project and Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings* (NOI). The NOI was issued during the pre-filing review of the Project in Docket No. PF14–18–000. On April 29, 2015, the Commission issued a supplemental NOI for the newly identified locations for the Pendleton Compressor Station and Wheatfield Dehydration Facility. After National Fuel filed a new site for the Pendleton Compressor Station in the amended docket, the Commission issued an additional supplemental NOI on November 19, 2015.

The NOIs were sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to the NOI, the Commission received comments from U.S. Environmental Protection Agency; U.S. Fish and Wildlife Service; New York State Department of Environmental Conservation; New York Office of Parks, Recreation & Historic Preservation; and numerous individuals and landowners. The primary issues raised by the commentors include potential impacts on wetlands; waterbodies; forested areas; groundwater; threatened and endangered species; socioeconomic; land use and recreational; air quality; noise; safety; and potential cumulative impacts.

The U.S. Army Corps of Engineers and the New York Department of Agriculture and Markets are cooperating agencies in the preparation of the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of all formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208–FERC or on the FERC Web site (*www.ferc.gov*). Using the "eLibrary" link, select "General Search" from the eLibrary menu, enter the selected date range and "Docket Number" excluding the last three digits (*i.e.,* CP15–115), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: April 14, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–09091 Filed 4–19–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Membership of Performance Review Board For Senior Executives (PRB)

The Federal Energy Regulatory Commission hereby provides notice of the membership of its Performance Review Board (PRB) for the Commission's Senior Executive Service (SES) members. The function of this board is to make recommendations relating to the performance of senior executives in the Commission. This action is undertaken in accordance with Title 5, U.S.C., Section 4314(c)(4).

The Commission's PRB will remove the following members:

David L. Morenoff

The Commission's PRB will add the following members:

Max J. Minzner

Dated: April 14, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–09088 Filed 4–19–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket EL 10–18–000]

Conway Corporation; Notice of Filing

Take notice that on April 13, 2016, Conway Corporation submitted a second supplement to its November 19, 2015 application for proposed rate for Reactive Supply and Voltage Control.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on April 20, 2016.

Dated: April 14, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–09087 Filed 4–19–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No., EL16–17–000]

City of West Memphis, Arkansas; Notice of Filing

Take notice that on April 13, 2016, the City of West Memphis, Arkansas submitted a second supplement to its November 19, 2015 application for proposed rate for Reactive Supply and Voltage Control.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on April 20, 2016.

Dated: April 14, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–09086 Filed 4–19–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2114–271]

Public Utility District No. 2 of Grant County; Notice of Application and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Filing of Maps Pursuant to Approved Shoreline Management Plan.

b. *Project No:* 2114–271.

c. *Date Filed:* January 29, 2016.

d. *Applicant:* Public Utility District No. 2 of Grant County (Grant PUD).

e. *Name of Project:* Priest Rapids Hydroelectric Project.

f. *Location:* The Priest Rapids Hydroelectric Project is located on the mid-Columbia River in portions of Grant, Yakima, Kittitas, Douglas, Benton, and Chelan counties, Washington. The relevant map non-project use restrictions are located in Yakima and Kittitas counties.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Ross Hendrick, License Compliance Manager, Grant PUD, P.O. Box 878, Ephrata, WA 98823–0878, (509) 793–1468, *rhendr1@gcpud.org.*

i. *FERC Contact:* Hillary Berlin, (202) 502–8915, *hillary.berlin@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests: May 14, 2016.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, or recommendations using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. The first page of any filing should include docket number P–2114–271.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The licensee filed maps delineating areas on project lands within the project facilities classification where no non-project uses will be authorized. The licensee will consider non-project use requests in areas not specifically reserved for hydropower generation at Wanapum and Priest Rapids Dams, for operation of Priest Rapids Hatchery, and for the Wanapum Dam Indian Village adjacent to Priest Rapids Dam. For lands classified as Public Recreation Development, the licensee will only consider non-project use requests that demonstrate substantial public benefit and open access.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: April 14, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–09089 Filed 4–19–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP16–3–001]

Texas Eastern Transmission, LP; Notice of Filing

Take notice that on March 29, 2016, Texas Eastern Transmission, LP (Texas Eastern) filed an amendment, pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations, for the Access South, Adair Southwest and Lebanon Extension Projects. The Application of the project was originally filed on October 8, 2015 in Docket No. CP16–3–000. The amended filing may be viewed on the web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@gerc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this application should be directed to Berk Donaldson General Manager, Rates & Certificates Texas Eastern Transmission, LP P.O. Box 1642 Houston, Texas 77251–1642 or telephone: (713) 627–4488, or by fax (713) 627–5947.

Texas Eastern's proposes amending the Application to request authorization under Section 7(c) of the NGA to construct, install, own, operate, and maintain approximately 0.5 miles of replacement pipeline and appurtenant facilities in Attala County, Mississippi as part of its Access South Project. Texas Eastern is also requesting authority pursuant to Section 7(b) of the NGA to abandon pipeline that is being removed as part of the lift and replacement activities.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 5 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of any mailed environmental documents, and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: 5:00 p.m. Eastern Time on May 5, 2016.

Dated: April 14, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–09084 Filed 4–19–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC06–48–005.
Applicants: Westar Energy, Inc.
Description: Request to Terminate Mitigation Measures and Reporting Requirement of Westar Energy, Inc.
Filed Date: 4/13/16.
Accession Number: 20160413–5276.
Comments Due: 5 p.m. ET 5/4/16.

Docket Numbers: EC16–101–000.
Applicants: White Pine Solar, LLC, White Oak Solar, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act and Request for Expedited Action of White Pine Solar, LLC, et. al.

Filed Date: 4/13/16.
Accession Number: 20160413–5258.
Comments Due: 5 p.m. ET 5/4/16.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG16–87–000.
Applicants: Peak View Wind Energy LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Peak View Wind Energy LLC.
Filed Date: 4/14/16.
Accession Number: 20160414–5055.
Comments Due: 5 p.m. ET 5/5/16.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–1431–001.
Applicants: Northampton Generating Company, L.P.
Description: Compliance filing: Informational Filing and Unopposed Request for Limited Waiver to be effective N/A.
Filed Date: 4/7/16.
Accession Number: 20160407–5195.
Comments Due: 5 p.m. ET 4/28/16.

Docket Numbers: ER16–1400–000.
Applicants: Golden Fields Solar I, LLC.
Description: Baseline eTariff Filing: Shared Facilities Agreement, FERC Electric Rate Schedule No. 1 to be effective 4/14/2016.
Filed Date: 4/13/16.
Accession Number: 20160413–5240.
Comments Due: 5 p.m. ET 5/4/16.

Docket Numbers: ER16–1401–000.
Applicants: Golden Fields Solar II, LLC.
Description: Baseline eTariff Filing: Shared Facilities Agreement, FERC Electric Rate Schedule No. 1 to be effective 4/14/2016.
Filed Date: 4/13/16.
Accession Number: 20160413–5242.
Comments Due: 5 p.m. ET 5/4/16.

Docket Numbers: ER16–1402–000.
Applicants: Golden Fields Solar III, LLC.
Description: Baseline eTariff Filing: Shared Facilities Agreement, FERC Electric Rate Schedule No. 1 to be effective 4/14/2016.
Filed Date: 4/13/16.
Accession Number: 20160413–5243.
Comments Due: 5 p.m. ET 5/4/16.

Docket Numbers: ER16–1403–000.
Applicants: Golden Fields Solar IV, LLC.
Description: Baseline eTariff Filing: Shared Facilities Agreement, FERC Electric Rate Schedule No. 1 to be effective 4/14/2016.
Filed Date: 4/13/16.
Accession Number: 20160413–5244.
Comments Due: 5 p.m. ET 5/4/16.

Docket Numbers: ER16–1404–000.
Applicants: New York Independent System Operator, Inc.
Description: Compliance filing: Compliance—BSM Rule Renewable and Self Supply Exemptions to be effective 10/9/2015.
Filed Date: 4/13/16.
Accession Number: 20160413–5246.
Comments Due: 5 p.m. ET 5/4/16.

Docket Numbers: ER16–1405–000.
Applicants: Western Spirit Clean Line LLC.
Description: Application for authorization to sell transmission service rights at negotiated rates, request for approval of capacity allocation process, and request for waivers of Western Spirit Clean Line LLC.
Filed Date: 4/13/16.
Accession Number: 20160413–5257.
Comments Due: 5 p.m. ET 5/4/16.

Docket Numbers: ER16–1406–000.
Applicants: Peak View Wind Energy LLC.
Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 6/14/2016.
Filed Date: 4/14/16.
Accession Number: 20160414–5047.
Comments Due: 5 p.m. ET 5/5/16.

Docket Numbers: ER16–1406–001.
Applicants: Peak View Wind Energy LLC.
Description: Tariff Amendment: Supplement to April 14, 2016 Market-Based Rate Application to be effective 6/14/2016.
Filed Date: 4/14/16.
Accession Number: 20160414–5054.
Comments Due: 5 p.m. ET 5/5/16.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 14, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–09093 Filed 4–19–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP16–116–000; PF15–14–000]

Texas LNG Brownsville LLC; Notice of Application

Take notice that on March 31, 2016, Texas LNG Brownsville LLC (Texas LNG), 2800 North Loop West, Suite 910, Houston, Texas 77092, filed an application pursuant to section 3(a) of the Natural Gas Act (NGA) and Part 153 of the Commission's Regulations, requesting authorization to site, construct, modify, and operate a new liquefied natural gas export terminal (Texas LNG Project) located in the Port of Brownsville, Texas. The filing may be viewed on the web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free (886) 208–3676 or TYY (202) 502–8659.

Any questions regarding this application should be directed to Langtry Meyer, Chief Operating Officer, Texas LNG Brownsville LLC, 2800 North Loop West, Suite 910, Houston, Texas 77092, telephone (832) 849–4920, or email *lmeyer@txlng.com.*

Specifically, Texas LNG proposes to construct two 2 million ton per annum liquefaction trains; two single containment, 210,000 cubic meter capacity, storage tanks; one LNG carrier berth and dredged maneuvering basin; and all necessary ancillary and support facilities. These facilities will enable Texas LNG to liquefy and export up to 0.6 billion cubic feet of natural gas per day. Texas LNG states it will receive natural gas via a non-jurisdictional intrastate natural gas pipeline.

On April 14, 2015, the Commission staff granted Texas LNG's request to use the National Environmental Policy Act (NEPA) Pre-Filing Process and assigned Docket No. PF15–14–000 to staff activities involving the proposed facilities. Now, as of the filing of this application on March 31, 2016, the NEPA Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket

No. CP16–116–000, as noted in the caption of this Notice.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 5 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: 5:00 p.m. Eastern Time on May 5, 2016.

Dated: April 14, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–09085 Filed 4–19–16; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1966–054]

Wisconsin Public Service Corporation; Notice of Application Tendered For Filing with the Commission and Establishing Procedural Schedule For Licensing and Deadline For Submission of Final Amendments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–1966–054.

c. *Date filed:* March 30, 2016.

d. *Applicant:* Wisconsin Public Service Corporation.

e. *Name of Project:* Grandfather Falls Hydroelectric Project.

f. *Location:* The existing project is located on the Wisconsin River in Lincoln County, Wisconsin. The project would occupy 0.1 acres of Federal land managed by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Todd P. Jastremski, Asset Manager Hydro Operations, WE Energies, 800 Industrial Park Drive, Iron Mountain, MI 49801; or at (906) 779–4099.

i. *FERC Contact:* Lee Emery at (202) 502–8379 or by email at *lee.emery@ferc.gov.*

j. This application is not ready for environmental analysis at this time.

k. The existing Grandfather Falls Hydroelectric Project consists of (1) a 36-foot-high, 625-foot-long reinforced concrete main dam with a crest elevation of 1,402 feet National Geodetic Vertical Datum (NGVD) that includes a masonry non-overflow wall, a concrete spillway section with seven Tainter gates, and a non-overflow masonry dam and a rockfill embankment with masonry core wall; (2) a 340-acre reservoir at a full-pool elevation of 1,397.1 feet NGVD; (3) a 67-foot-long by 51-foot-wide powerhouse containing an 11–MW turbine-generator and a 6.2-megawatt (MW) turbine-generator providing a combined installed capacity 17.2 MW; (4) a 300-foot-wide by 4,000-foot-long intake canal; (5) an 11-foot-diameter by 1,325-foot-long wooden stave penstock and a 13.5-foot-diameter by 1,325-foot-long wooden stave penstock to the powerhouse; (7) a steel surge tank connected to each penstock; (8) an intake structure at the downstream end of the intake canal with two 55.5-foot-wide by 30.5-foot-high trashracks with a clear bar spacing of 2.5 inches; (9) a 20-foot-wide by 167-foot long concrete sluiceway at the canal intake structure; (10) 6.9-kilovolt (kV) generator leads; (11) a 300-foot-long, 46 kV overhead transmission line; and (12) appurtenant facilities. The intake canal and penstocks bypass about 4,800 feet of the Wisconsin River.

The Grandfather Falls Project is operated in a limited peaking mode. The project is fully automated and is remotely operated from Wisconsin Public Service's control center in Green Bay, which is staffed 24 hours a day, and 365 days a year. Remote operation includes starting and stopping the project generators, monitoring kilowatt output, monitoring headwater and tailwater gage elevations, and maintaining headwater elevations through the operation of a heated gate structure. The project is required to maintain a minimum flow of 400 cubic feet per second (cfs) or inflow, whichever is less, as measured below the project tailrace and include a continuous minimum flow of 50 cfs released into the bypassed reach of the Wisconsin River between the project dam and the tailrace.

During normal peaking operations, the impoundment is drawn down from the maximum pond elevation during the day and refilled at night providing one peaking cycle per day. The maximum elevation of the impoundment is 1,397.1 feet NGVD and the minimum elevation is 1,396.1 feet NGVD. The operating regime has both seasonal and daily variations depending on precipitation and controlled releases made at upstream storage reservoirs, regulated by the Wisconsin Valley Improvement Company. Water releases from the Tomahawk and the Grandmother Falls projects and the non-power dam at Spirit Lake, (which are all located upstream from the Grandfather Falls Project) are coordinated with water releases from the Grandfather Falls Project to ensure that adequate water is available in the Wisconsin River during the seasonal low-flow periods. The pondage provided by the 1 foot of maximum drawdown between elevation 1,396.1 feet NGVD and 1397.1 feet NGVD for the Grandfather Falls Project, is used to augment and adjust the timing of the peaking operation at the project. Recharge of the Grandfather Falls reservoir occurs in the late evening and early morning hours. The peaking discharges from the Grandfather Falls Project are attenuated by the effects of the downstream Bill Cross Rapids (which is part of a free-flowing stretch of the Wisconsin River) with no evidence of the project's peaking effects visible at Wisconsin Public Service Corporation's downstream Alexander Project (FERC No. 1979), which operates in a run-of-river mode. When flows in the Wisconsin River exceed 2,820 cfs, water is discharged via operation of the spillway Tainter gates at the project.

l. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERCOnline *Support@ferc.gov,* (866) 208–3676 (toll free) or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in item h above.

m. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural schedule:*

The application will be processed according to the following preliminary Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Notice of Acceptance/Notice of Ready for Environmental Analysis.	June 2016.
Filing of recommendations, preliminary terms and conditions, and fishway prescriptions.	August 2016.
Issue Environmental Assessment (EA).	December 2016.
Comments due on EA	January 2017.
Modified terms and conditions.	March 2017.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Dated: April 6, 2016.

Kimberly D. Bose,

Secretary.

[FR Doc. 2016–09092 Filed 4–19–16; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2013–0118; FRL–9945–31–OAR]

Proposed Information Collection Request; Comment Request; Control of Evaporative Emissions From New and In-Use Portable Gasoline Containers (Renewal), ICR 2213.05, OMB 2060–0597

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), " Control of Evaporative Emissions from New and In-Use Portable Gasoline Containers (Renewal)", ICR 2213.05, OMB 2060–0597 to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection request as described below. This notice is a proposed extension of the Portable Fuel Container ICR, which is currently approved through August 31, 2016. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before June 20, 2016.

ADDRESSES: Submit your comments, referencing the Docket ID numbers provided for each item in the text, online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Julia Giuliano, Compliance Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105; telephone number: 734–214–4865; fax number 734–214–4869; email address: *giuliano.julia@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting will be available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: EPA is required under Section 183(e) of the Clean Air Act to regulate Volatile Organic Compound (VOC) emissions from the use of consumer and commercial products. Under regulations promulgated on February 26, 2007 (72 FR 8428) manufacturers of new portable gasoline containers are required to obtain certificates of conformity with the Clean Air Act, effective January 1, 2009. This ICR covers the burdens associated with this certification process. EPA reviews information submitted in the application for certification to determine if the container design conforms to applicable requirements and to verify that the required testing has been performed. The certificate holder is required to keep records on the testing and collect and keep warranty and defect information for annual reporting on in-use performance of their products. The respondent must also retain records on the units produced, apply serial numbers to individual containers, and track the serial numbers to their certificates of conformity. Any information submitted for which a claim of confidentiality is made is safeguarded according to EPA regulations at 40 CFR 2.201 *et seq.*

Form Numbers: None.

Respondents/affected entities: manufacturers of new portable gasoline containers from 0.25 to 10.0 gallons in capacity.

Respondent's obligation to respond: mandatory 40 CFR part 59, subpart F.

Estimated number of respondents: 8 (total).

Frequency of response: yearly for warranty reports; at least once every five years for certificate renewals.

Total estimated burden: 250 hours (per year). Burden is defined at 5 CFR 1320.3(b)

Total estimated cost: $32,419.45 (per year), includes $20,452 annualized capital or operation & maintenance costs.

Changes in Estimates: There is an increase of 37 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase of the estimated burden and cost estimates is due to a change in the estimated cost of labor and additional testing requirements for new portable fuel container families to comply with the requirements for evaporative testing promulgated in 40 CFR part 59.

Dated: April 14, 2016.

Byron J. Bunker,

Director, Compliance Division, Office of Transportation and Air Quality, Office of Air and Radiation.

[FR Doc. 2016–09156 Filed 4–19–16; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0393; FRL–9944–09]

Aquashade, Nithiazine, d-limonene, and 2H-Cyclopent(d)isothiazol-3(4H)-one, 5,6-dihydro-2-methyl- (MTI) Registration Review Interim Decisions; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's interim registration review decisions for the pesticides aquashade, nithiazine, d-limonene, and 2H-Cyclopent(d)isothiazol-3(4H)-one, 5,6-dihydro-2-methyl- (MTI). Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, that the pesticide can perform its intended function without causing unreasonable adverse effects on human health or the environment. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information, contact:* The Chemical Review Manager for the pesticide of interest identified in the Table in Unit II. *For general information on the registration review program, contact:* Richard Dumas, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8015; email address: *dumas.richard@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm workers, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the pesticide specific contact person listed in the Table in Unit II.

FOR FURTHER INFORMATION CONTACT:

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2015–0393 is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. What action is the Agency taking?

Pursuant to 40 CFR 155.58(c), this notice announces the availability of EPA's interim registration review decision for the pesticides found in the Table in this unit.

TABLE—REGISTRATION REVIEW INTERIM DECISIONS

Registration review case name and No.	Pesticide docket ID No.	Chemical review manager, telephone number, email address
Aquashade (Case 4010)	EPA–HQ–OPP–2015–0639	Christina Motilall, *motilall.christina@epa.gov*, (703) 603–0522.

TABLE—REGISTRATION REVIEW INTERIM DECISIONS—Continued

Registration review case name and No.	Pesticide docket ID No.	Chemical review manager, telephone number, email address
Nithiazine (Case 7415)	EPA–HQ–OPP–2008–0847	Brian Kettl, *kettl.brian@epa.gov*, (703) 347–0535.
d-limonene (Case 3083)	EPA–HQ–OPP–2010–0673	Caitlin Newcamp, *newcamp.caitlin@epa.gov*, (703) 347–0325.
2H-Cyclopent(d)isothiazol-3(4H)-one, 5,6-dihydro-2-methyl- (MTI) (Case 5018).	EPA–HQ–OPP–2015–0266	Rachel Ricciardi, *ricciardi.rachel@epa.gov*, (703) 347–0465.

Aquashade (Interim Decision). Aquashade is as an aquatic herbicide whose mode of action is light filtration. It is primarily used in small water bodies like ornamental ponds and small lakes, fountains and other landscaping water features, swimming holes, aquaculture ponds, and animal watering holes. The Ecological Risk Assessment found no level of concern risk exceedances to all taxa. The Human Health Risk Assessment also indicated no risk (dietary, residential, and occupational). Aquashade was not on either initial list of chemicals to be screened under the Endocrine Disruptor Screening Program (EDSP), and an endangered species assessment has not been conducted at this time. No mitigation is proposed at this time. The Agency's final registration review decision is dependent upon the assessment of risks to threatened and endangered species and after an EDSP Federal Food, Drug and Cosmetic Act (FFDCA) Section 408(p) determination has been made.

Nithiazine (Interim Decision). The Nithiazine Summary Document was published on March 18, 2009. Nithiazine is used as part of a bait station to control flies in animal housing facilities and other industrial operations. The structure of the bait station makes contact between nithiazine and humans unlikely; therefore, there are no human health risk concerns for nithiazine. Since the active ingredient is contained in a bait station, no ecological exposure is expected. Therefore, there are no ecological risk concerns for nithiazine. Nithiazine does not pose a threat to pollinators and the Agency has determined that it will cause No Effect to listed species. The Agency has determined that no additional data are required at this time to support the continuing registrations of nithiazine products. The final decision on the registration review for nithiazine will occur after an EDSP FFDCA section 408(p) determination has been made.

d-Limonene (Interim Decision). The registration review docket for d-limonene opened in September 2010. d-Limonene is a naturally occurring chemical obtained from the rind of citrus fruits. It is registered for use as an acaricide, insecticide, herbicide, insect repellent, and is used as an inert ingredient for scent and flavoring in other non-pesticide products. d-Limonene is currently registered for use in/on food crops (citrus, pome fruits, grapes), feed crops, non-food crops (ornamentals, Christmas trees, fencerows, recreational areas, wood protection) and for residential uses. EPA published the draft human health and ecological risk assessments in December 2014. A qualitative human health assessment was conducted, and the Agency concluded that d-limonene does not pose a risk to human health. A quantitative ecological risk assessment was conducted and levels of concern were exceeded for terrestrial plants and mammals (risks to birds and terrestrial invertebrates could not be precluded). The Agency is requiring modifications to several labels to reduce potential risks of d-limonene to terrestrial birds and mammals. In addition, the Agency will make several modifications to 40 CFR part 180. The Agency will establish an exemption for the herbicidal uses of d-limonene from a tolerance under subpart D, and existing exemption from tolerances from the repellant uses of d-limonene under 180.539 subpart C will be moved to subpart D for insecticidal uses. This Interim Decision does not cover the EDSP component of this registration review case, nor does it include a complete endangered species assessment or pollinator risk assessment. The Agency's final registration review decision is dependent upon the assessment of risks to threatened and endangered species and pollinators as well as a determination under FFDCA Section 408(p) regarding endocrine disruption.

2H-Cyclopent(d)isothiazol- 3(4H)-one, 5,6-dihydro-2- methyl- (Interim Decision). There is one EPA registered product containing active ingredient 2H-Cyclopent(d)isothiazol-3(4H)-one, 5,6- dihydro-2- methyl-, also known as MTI. MTI is a materials preservative for use in the manufacture of aqueous compositions used in the manufacture of imaging products. The Agency did not require any additional data in support of MTI's registration review or need to conduct human health or environmental risk assessments due to the lack of exposure concerns for MTI's registered use. Based on the lack of potential exposure, the Agency made a "no effect" determination for listed species under the Endangered Species Act (ESA). Except for the EDSP component of the MTI registration review case, the Agency is not requiring additional data and is not proposing any risk reduction measures for this case. The final decision on the registration review for MTI will occur after the EDSP FFDCA section 408(p) determination is made.

Pursuant to 40 CFR 155.57, a registration review decision is the Agency's determination whether a pesticide meets, or does not meet, the standard for registration in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). EPA has considered the pesticides found in the Table in this unit in light of the FIFRA standard for registration. The Interim Decision document in the dockets describes the Agency's rationale for issuing a registration review interim decision for these pesticides.

In addition to the interim registration review decision documents, the registration review dockets for the pesticides listed in the Table in this unit also includes other relevant documents related to the registration review of these cases. The proposed interim registration review decisions were posted to the docket and the public was invited to submit any comments or new information.

EPA addresses the comments or information received during the 60-day comment period in the discussion for each pesticide listed in this document. During the 60-day comment period, no public comments were received for aquashade, nithiazine, or 2H-Cyclopent(d)isothiazol- 3(4H)-one, 5,6-

dihydro-2- methyl (MTI). Comments were received for d-limonene however the public comments received were not substantive and did not affect the Agency's interim decision.

Pursuant to 40 CFR 155.58(c), the registration review case docket for the pesticides listed in the Table in Unit II will remain open until all actions required in the interim decisions have been completed.

Background on the registration review program is provided at: *https://www.epa.gov/pesticide-reevaluation/registration-review-process.* Links to earlier documents related to the registration review of these pesticides are provided in the pesticide chemical search data base accessible at *https://iaspub.epa.gov/apex/pesticides/f?p=chemicalsearch:1.*

Authority: 7 U.S.C. 136 *et seq.*

Dated: April 13, 2016.

Yu-Ting Guilaran,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2016–09155 Filed 4–19–16; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1177]

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before May 20, 2016. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@omb.eop.gov*; and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the OMB control number of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1177.

Title: 47 CFR 74.800, Channel Sharing Agreement.

Form Numbers: Not applicable.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; Not for profit institutions; State, local or Tribal government.

Number of Respondents/Responses: 100 respondents; 100 responses.

Estimated Hours per Response: 1 hr.

Frequency of Response: One time reporting requirement.

Total Annual Burden: 100 hours.

Total Annual Cost: $54,000.

Obligation to Respond: Required to obtain benefits. The statutory authority for this information collection is contained in sections 1, 4(i) and (j), 7, 154(i), 301, 302, 303, 307, 308, 309, 312, 316, 318, 319, 324, 325, 336 and 337 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Privacy Act Assessment: No impact(s).

Needs and Uses: On December 18, 2015, the Commission released a Third Report and Order and Fourth Notice of Proposed Rulemaking, In the Matter of Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations, MB Docket No. 03–185, FCC 15–175. Low power television and television translator stations (collectively "LPTV stations") will be required to include certain terms in their channel sharing agreements (CSAs) and to file their CSAs with the Commission. This new requirement is provided in 47 CFR 74.800.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2016–09060 Filed 4–19–16; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within twelve days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 011275–038.

Title: Australia and New Zealand–United States Discussion Agreement.

Parties: CMA CGM, S.A. and ANL Singapore Pte Ltd. (acting as a single party); Hamburg-Süd KG; Hapag–Lloyd AG; and MSC Mediterranean Shipping Company S.A.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor LLP; 1200 Nineteenth St. NW.; Washington, DC 20036.

Synopsis: The Amendment would revise the notice required to resign from the agreement, and revise the minimum level of service to be provided by the agreement.

Agreement No.: 011953–013.

Title: Florida Shipowners Group Agreement.

Parties: The member lines of the Caribbean Shipowners Association and the Florida–Bahamas Shipowners and Operators Association.

Filing Party: Wayne Rohde, Esq.; Cozen O'Connor; 1200 Nineteenth Street NW.; Washington, DC 20036.

Synopsis: The amendment updates Appendix A to update the membership of the Caribbean Shipowners Association.

Agreement No.: 012282–001.

Title: Kyowa Shipping Co., Ltd. and Nippon Yusen Kaisha Space Charter Agreement.

Parties: Kyowa Shipping Co., Ltd. and Nippon Yusen Kaisha.

Filing Party: Kristen Chung, Corporate Counsel, NYK Line (North America) Inc.; 300 Lighting Way, 5th Floor; Secaucus, NJ 07094.

Synopsis: The amendment adds the trade between American Samoa and Japan to the geographic scope of the agreement.

Agreement No.: 012399.

Title: NYK/Zim Slot Exchange Agreement.

Parties: Nippon Yusen Kaisha and Zim Integrated Shipping Services Co., Ltd.

Filing Party: Mark E. Newcomb; ZIM American Integrated Shipping Services, Co. LLC; 5801 Lake Wright Dr.; Norfolk, VA 23508.

Synopsis: The agreement authorizes the parties to charter slots on each other's vessels in the trade between the U.S. on the one hand, and China, Vietnam, Singapore, Malaysia, Thailand, Sri Lanka, Egypt, Italy, United Arab Emirates, and Canada on the other hand.

By Order of the Federal Maritime Commission.

Dated: April 15, 2016.

Karen V. Gregory,

Secretary.

[FR Doc. 2016–09146 Filed 4–19–16; 8:45 am]

BILLING CODE 6731–AA–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 5, 2016.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *William Stuart Perry, Howard Steven Perry, William Cavanagh Perry, Constance Ann Perry Thomas, Carrie Peighton Perry VanAusdall, and Edmond Lewis Perry, all of Nashville, Georgia, Sara Amelia Perry Parkerson, Greensboro, Georgia, and Justin Stuart Perry,* Hilton Head, South Carolina; to retain voting shares of The Nashville Holding Company, and thereby indirectly retain voting shares of The Citizens Bank, both in Nashville, Georgia.

B. Federal Reserve Bank of Minneapolis (Jacquelyn K. Brunmeier, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Dean M. Wehri,* as a trustee/administrator of the Commercial Bank of Mott Employee Stock Ownership Plan and Trust, both of Mott, North Dakota; to acquire voting shares of Commercial Bank of Mott Employee Stock Ownership Plan and Trust, and thereby indirectly acquire voting shares of Commercial Bank of Mott, both in Mott, North Dakota.

Board of Governors of the Federal Reserve System, April 15, 2016.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2016–09124 Filed 4–19–16; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–16–1067]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (e) Assess information collection costs.

To request additional information on the proposed projects or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Improving the Impact of Laboratory Practice Guidelines (LPGs): A New Paradigm for Metrics—College of American Pathologists (OMB Control No. 0920–1067)—Revision—Center for Surveillance, Epidemiology and

Laboratory Services (CSELS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC) funded the College of American Pathologists (CAP) as one of three professional organizations in 5-year cooperative agreement projects collectively entitled "Improving the Impact of Laboratory Practice Guidelines: A New Paradigm for Metrics." An "LPG" is defined as written recommendations for voluntary, standardized approaches for medical laboratory testing that takes into account processes for test selection, sample procurement and processing, analytical methods, and results reporting for effective diagnosis and management of disease and health conditions. The overall purpose of these cooperative agreements is to increase the effectiveness of LPGs by defining measures and collecting information to inform better LPG creation, revision, dissemination, promotion, uptake, and impact on clinical testing and public health. The project will explore how these processes and their impediments and facilitators differ among various intended users of LPGs. Through this demonstration project, CDC seeks to understand how to customize LPG creation and promotion to better serve these intended users of LPGs. An important goal is to help organizations that sponsor the development of LPGs create a sustainable approach for continuous quality improvement to evaluate and improve an LPG's impact through better collection of information.

One of the awardees is the College of American Pathologists (CAP). This revision request concerns additional information collection relating to the CAP's LPG for immunohistochemistry (IHC) testing, for which a post dissemination survey was approved under OMB Control No. 0920–1067 and has been completed. We are requesting a revision to the OMB-approved 0920–1067 package by adding two information collections: Telephone interviews and focus groups as a follow-up to the completed IHC LPG post survey to further explore the survey findings that are being analyzed now. The questions to be used for the telephone interviews and focus groups are based on the questions and results of the IHC post survey, to help CAP and CDC better understand the impediments and facilitators that affect uptake of the IHC LPG. The intended participants in the proposed telephone interviews and focus groups will be selected from the IHC post survey respondents which include pathologists, pathology chairs, clinical laboratory directors, laboratory managers overseeing the IHC staining department, laboratory supervisors, and histotechnologists.

This revision request represents a decrease in burden. The proposed telephone interviews will explore the impediments and facilitators that affect uptake and use of the CAP IHC LPG, both generally and concerning specific recommendations. This will be followed by two focus groups, arranged into two peer groups of pathologists (composed of pathologists, pathology chairs, and laboratory directors) and non-pathologist laboratory professionals (composed of laboratory managers, laboratory supervisors, and histotechnologists for the purpose of estimating burden), which will allow us to collect information on the current usage of CAP's tools and resources (toolkit) to facilitate implementation of the IHC guideline for its future improvement.

For this request, the CAP will collect information via 40 telephone interviews (20 pathologists, 10 laboratory directors, and 10 laboratory managers). The telephone interview questions are scripted to be completed within 20 minutes by each respondent (0.33 hour per respondent or ~13 hours total). Because the CAP anticipates that approximately 121 laboratory individuals (41 pathologists, 40 laboratory directors, and 40 laboratory managers) will need to be contacted to reach 40 individuals who will voluntarily participate, and the burden for those individuals who will not go on to participate (81) in the telephone interview is one minute, the total burden for individuals who decline participation is 81 minutes (1.35 hours).

In addition, the CAP will conduct two focus group sessions and invite 12 participants to each of the sessions, composed of the following respondent types: (4) Pathologists, (4) pathology chairs, (4) laboratory directors, (4) laboratory managers, (4) laboratory supervisors, and (4) histotechnologists. Each of the focus groups will last no more than 60 minutes (1.0 hour) which is based on standard focus group planning instructions, inclusive of time required to complete informed consent (24 hours or 1,440 minutes total burden). It is anticipated that 200 individuals will be contacted to determine their availability to participate in one of the two focus group sessions and each will take no longer than 5 minutes to read and respond to the invitation letter (~17 hours or 1000 minutes total). The 200 individuals contacted will be composed of the following respondent types: (34) Pathologists, (33) pathology chairs, (33) laboratory directors, (34) laboratory managers, (33) laboratory supervisors, and (33) histotechnologists.

This revision includes three types of laboratory professionals who were not included in the original OMB-approved submission: Pathology chairs, laboratory supervisors, and histotechnologists. Because the OMB-approved IHC post-survey has been completed, this request for approval of additional data collection (telephone interviews and focus groups) is a reduction of burden. The total new burden for this revision request will be ~58 hours which is a reduction of 1,512 hours from the previously approved submission. A total of 321 respondents (121 invited to take the telephone interview and 200 invited to participate in focus groups), is a reduction of 4,114 respondents with an approved burden of 1,570 hours and 4,435 respondents).

There are no costs to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
IHC telephone interview-contacted	Pathologists	41	1	1/60
	Laboratory Directors	40		
	Laboratory Managers	40		
IHC telephone interview	Pathologists	20	1	20/60
	Laboratory Directors	10		
	Laboratory Managers	10		
IHC focus group invitation	Pathologists	34	1	5/60

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
IHC focus group	Pathology Chairs	33	1	1
	Laboratory Directors	33		
	Laboratory Managers	34		
	Laboratory Supervisors	33		
	Histotechnologists	33		
	Pathologists	4		
	Pathology Chairs	4		
	Laboratory Directors	4		
	Laboratory Managers	4		
	Laboratory Supervisors	4		
	Histotechnologists	4		

LeRoy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2016–09190 Filed 4–19–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2015–0089]

Final Revised Vaccine Information Materials for 9-valent HPV (Human Papillomavirus) Vaccine

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: Under the National Childhood Vaccine Injury Act (NCVIA)(42 U.S.C. 300aa–26), CDC must develop vaccine information materials that all health care providers are required to give to patients/parents prior to administration of specific vaccines. On October 22, 2015, CDC published a notice in the **Federal Register** (80 FR 64002) seeking public comments on proposed updated vaccine information materials for 9-valent HPV (Human Papillomavirus) Gardasil®-9 vaccine. Following review of comments submitted and consultation as required under the law, CDC has finalized the materials. Copies of the final vaccine information materials for 9-valent HPV Gardasil®-9 vaccine are available to download from *http://www.cdc.gov/vaccines/hcp/vis/index.html* or *http://www.regulations.gov* (see Docket Number CDC–2015–0089).

DATES: Beginning no later than July 1, 2016, each health care provider who administers 9-valent HPV (Human Papillomavirus) Gardasil®-9 vaccine to any child or adult in the United States shall provide copies of the relevant vaccine information materials referenced in this notice, in conformance with the March 31, 2016 CDC Instructions for the Use of Vaccine Information Statements prior to providing such vaccinations.

FOR FURTHER INFORMATION CONTACT: Suzanne Johnson-DeLeon (*msj1@cdc.gov*), National Center for Immunization and Respiratory Diseases, Centers for Disease Control and Prevention, Mailstop A–19, 1600 Clifton Road NE., Atlanta, Georgia 30329.

SUPPLEMENTARY INFORMATION: The National Childhood Vaccine Injury Act of 1986 (Pub. L. 99–660), as amended by section 708 of Public Law 103–183, added section 2126 to the Public Health Service Act. Section 2126, codified at 42 U.S.C. 300aa–26, requires the Secretary of Health and Human Services to develop and disseminate vaccine information materials for distribution by all health care providers in the United States to any patient (or to the parent or legal representative in the case of a child) receiving vaccines covered under the National Vaccine Injury Compensation Program (VICP).

Development and revision of the vaccine information materials, also known as Vaccine Information Statements (VIS), have been delegated by the Secretary to the Centers for Disease Control and Prevention (CDC). Section 2126 requires that the materials be developed, or revised, after notice to the public, with a 60-day comment period, and in consultation with the Advisory Commission on Childhood Vaccines, appropriate health care provider and parent organizations, and the Food and Drug Administration. The law also requires that the information contained in the materials be based on available data and information, be presented in understandable terms, and include:

(1) A concise description of the benefits of the vaccine,

(2) A concise description of the risks associated with the vaccine,

(3) A statement of the availability of the National Vaccine Injury Compensation Program, and

(4) Such other relevant information as may be determined by the Secretary.

The vaccines initially covered under the National Vaccine Injury Compensation Program were diphtheria, tetanus, pertussis, measles, mumps, rubella, and poliomyelitis vaccines. Since April 15, 1992, any health care provider in the United States who intends to administer one of these covered vaccines is required to provide copies of the relevant vaccine information materials prior to administration of any of these vaccines. Since then, the following vaccines have been added to the National Vaccine Injury Compensation Program, requiring use of vaccine information materials for them as well: Hepatitis B, *Haemophilus influenzae* type b (Hib), varicella (chickenpox), pneumococcal conjugate, rotavirus, hepatitis A, meningococcal, human papillomavirus (HPV), and seasonal influenza vaccines. Instructions for use of the vaccine information materials are found on the CDC Web site at: *http://www.cdc.gov/vaccines/hcp/vis/index.html.*

Revised Vaccine Information Materials

The 9-valent HPV (Human Papillomavirus) Gardasil®-9 vaccine information materials referenced in this notice were developed in consultation with the Advisory Commission on Childhood Vaccines, the Food and Drug Administration, and parent and healthcare provider organizations. Following consultation and review of comments submitted, the vaccine information materials covering 9-valent

HPV Gardasil®-9 vaccine have been finalized and are available to download from *http://www.cdc.gov/vaccines/hcp/vis/index.html* or *http://www.regulations.gov* (see Docket Number CDC–2015–0089). The Vaccine Information Statement (VIS) is "HPV (Human Papillomavirus) Vaccine: What You Need to Know [Gardasil®-9]," publication date March 31, 2016.

With publication of this notice, as of July 1, 2016, all health care providers will be required to provide copies of these updated 9-valent HPVGardasil®-9 vaccine information materials prior to immunization in conformance with CDC's March 31, 2016 Instructions for the Use of Vaccine Information Statements.

Dated: April 15, 2016.

Veronica Kennedy,

Acting Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2016–09167 Filed 4–19–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Meeting of the Community Preventive Services Task Force

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: The Centers for Disease Control and Prevention (CDC) announces the next meeting of the Community Preventive Services Task Force (Task Force). The Task Force is an independent, nonpartisan, nonfederal, and unpaid panel. Its members represent a broad range of research, practice, and policy expertise in prevention, wellness, health promotion, and public health, and are appointed by the CDC Director. The Task Force was convened in 1996 by the Department of Health and Human Services (HHS) to identify community preventive programs, services, and policies that increase healthy longevity, save lives and dollars and improve Americans' quality of life. CDC is mandated to provide ongoing administrative, research, and technical support for the operations of the Task Force. During its meetings, the Task Force considers the findings of systematic reviews on existing research and issues recommendations. Task Force recommendations are not mandates for compliance or spending. Instead, they provide information about evidence-based options that decision makers and stakeholders can consider when determining what best meets the specific needs, preferences, available resources, and constraints of their jurisdictions and constituents. The Task Force's recommendations, along with the systematic reviews of the scientific evidence on which they are based, are compiled in the *Guide to Community Preventive Services (Community Guide).*

DATES: The meeting will be held on Wednesday, June 22, 2016 from 8:30 a.m. to 6:00 p.m. EDT and Thursday, June 23, 2016 from 8:30 a.m. to 1:00 p.m. EDT.

ADDRESSES: The Task Force Meeting will be held at CDC Edward R. Roybal Campus, Tom Harkin Global Communications Center (Building 19), and 1600 Clifton Road NE., Atlanta, GA 30329. You should be aware that the meeting location is in a Federal government building; therefore, Federal security measures are applicable. For additional information, please see Roybal Campus Security Guidelines under **SUPPLEMENTARY INFORMATION.** Information regarding meeting logistics will be available on the Community Guide Web site (*www.thecommunityguide.org*).

Meeting Accessability: This meeting is open to the public, limited only by space availability. All meeting attendees must RSVP to ensure the required security procedures are completed to gain access to the CDC's Global Communications Center.

U.S. citizens must RSVP by June 20, 2016.

Non U.S. citizens must RSVP by May 23, 2016 due to additional security steps that must be completed. Failure to RSVP by the dates identified could result in the inability to attend the Task Force meeting due to the strict security regulations on federal facilities.

Meeting Accessibility: This meeting is available to the public via Webcast. The Webcast URL will be sent to you upon receipt of your RSVP. All meeting attendees must RSVP to receive the webcast information which will be emailed to you upon receipt of registration to the *CPSTF@cdc.gov* mailbox.

For Further Information and to RSVP Contact: Onslow Smith, Center for Surveillance, Epidemiology and Laboratory Services, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–E–69, Atlanta, GA 30329, phone: (404) 498–6778, email: *CPSTF@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: The purpose of the meeting is for the Task Force to consider the findings of systematic reviews and issue findings and recommendations. Task Force recommendations provide information about evidence-based options that decision makers and stakeholders can consider when determining what best meets the specific needs, preferences, available resources, and constraints of their jurisdictions and constituents.

Matters to be discussed: Cancer prevention and control, cardiovascular disease prevention and control, diabetes prevention and control, and increasing physical activity.

Roybal Campus Security Guidelines: The Edward R. Roybal Campus is the headquarters of the U.S. Centers for Disease Control and Prevention and is located at 1600 Clifton Road NE., Atlanta, Georgia. The meeting is being held in a Federal government building; therefore, Federal security measures are applicable.

All meeting attendees must RSVP by the dates outlined under *Meeting Accessability.* In planning your arrival time, please take into account the need to park and clear security. All visitors must enter the Edward R. Roybal Campus through the front entrance on Clifton Road. Your car may be searched, and the guard force will then direct visitors to the designated parking area. Upon arrival at the facility, visitors must present government issued photo identification (*e.g.,* a valid federal identification badge, state driver's license, state non-driver's identification card, or passport). Non-United States citizens must complete the required security paperwork prior to the meeting date and must present a valid passport, visa, Permanent Resident Card, or other type of work authorization document upon arrival at the facility. All persons entering the building must pass through a metal detector. Visitors will be issued a visitor's ID badge at the entrance to Building 19 and may be escorted to the meeting room. All items brought to HHS/CDC are subject to inspection.

Dated: April 16, 2016.

Veronica Kennedy,

Acting Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2016–09164 Filed 4–19–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket No. CDC–2015–0059]

Final Revised Vaccine Information Materials for Meningococcal ACWY Vaccines

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: Under the National Childhood Vaccine Injury Act (NCVIA) (42 U.S.C. 300aa–26), CDC must develop vaccine information materials that all health care providers are required to give to patients/parents prior to administration of specific vaccines. On October 14, 2015, CDC published a notice in the **Federal Register** (80 FR 61819) seeking public comments on proposed updated vaccine information materials for Meningococcal ACWY and Serogroup B Meningococcal vaccines. Following review of comments submitted and consultation as required under the law, CDC has finalized the materials for Meningococcal ACWY vaccines. Copies of the final vaccine information materials for Meningococcal ACWY vaccines are available to download from *http://www.cdc.gov/vaccines/hcp/vis/index.html* or *http://www.regulations.gov* (see Docket Number CDC–2015–0059). CDC will publish the final vaccine information materials for Serogroup B Meningococcal vaccines when they are completed.

DATES: Beginning no later than July 1, 2016, each health care provider who administers Meningococcal ACWY vaccine to any child or adult in the United States shall provide copies of the relevant vaccine information materials referenced in this notice, in conformance with the March 31, 2016 CDC Instructions for the Use of Vaccine Information Statements prior to providing such vaccinations.

FOR FURTHER INFORMATION CONTACT: Suzanne Johnson-DeLeon (*msj1@cdc.gov*), National Center for Immunization and Respiratory Diseases, Centers for Disease Control and Prevention, Mailstop A–19, 1600 Clifton Road NE., Atlanta, Georgia 30329.

SUPPLEMENTARY INFORMATION: The National Childhood Vaccine Injury Act of 1986 (Pub. L. 99–660), as amended by section 708 of Public Law 103–183, added section 2126 to the Public Health Service Act. Section 2126, codified at 42 U.S.C. 300aa–26, requires the Secretary of Health and Human Services to develop and disseminate vaccine information materials for distribution by all health care providers in the United States to any patient (or to the parent or legal representative in the case of a child) receiving vaccines covered under the National Vaccine Injury Compensation Program (VICP).

Development and revision of the vaccine information materials, also known as Vaccine Information Statements (VIS), have been delegated by the Secretary to the Centers for Disease Control and Prevention (CDC). Section 2126 requires that the materials be developed, or revised, after notice to the public, with a 60-day comment period, and in consultation with the Advisory Commission on Childhood Vaccines, appropriate health care provider and parent organizations, and the Food and Drug Administration. The law also requires that the information contained in the materials be based on available data and information, be presented in understandable terms, and include:

(1) A concise description of the benefits of the vaccine,

(2) A concise description of the risks associated with the vaccine,

(3) A statement of the availability of the National Vaccine Injury Compensation Program, and

(4) Such other relevant information as may be determined by the Secretary.

The vaccines initially covered under the National Vaccine Injury Compensation Program were diphtheria, tetanus, pertussis, measles, mumps, rubella, and poliomyelitis vaccines. Since April 15, 1992, any health care provider in the United States who intends to administer one of these covered vaccines is required to provide copies of the relevant vaccine information materials prior to administration of any of these vaccines. Since then, the following vaccines have been added to the National Vaccine Injury Compensation Program, requiring use of vaccine information materials for them as well: Hepatitis B, *Haemophilus influenzae* type b (Hib), varicella (chickenpox), pneumococcal conjugate, rotavirus, hepatitis A, meningococcal, human papillomavirus (HPV), and seasonal influenza vaccines. Instructions for use of the vaccine information materials are found on the CDC Web site at: *http://www.cdc.gov/vaccines/hcp/vis/index.html*.

Revised Vaccine Information Materials

The Meningococcal ACWY vaccine information materials referenced in this notice were developed in consultation with the Advisory Commission on Childhood Vaccines, the Food and Drug Administration, and parent and healthcare provider organizations. Following consultation and review of comments submitted, the vaccine information materials covering meningococcal ACWY vaccines have been finalized and are available to download from *http://www.cdc.gov/vaccines/hcp/vis/index.html* or *http://www.regulations.gov* (see Docket Number CDC–2015–0059). The Vaccine Information Statement (VIS) is "Meningococcal ACWY Vaccines (MenACWY and MPSV4): What You Need to Know," publication date March 31, 2016.

With publication of this notice, as of July 1, 2016, all health care providers will be required to provide copies of these updated meningococcal ACWY vaccine information materials prior to immunization in conformance with CDC's March 31, 2016 Instructions for the Use of Vaccine Information Statements.

Dated: April 15, 2016.

Veronica Kennedy,

Acting Executive Secretary, Centers for Disease Control and Prevention.

[FR Doc. 2016–09166 Filed 4–19–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: The Tribal TANF Financial Report (ACF–196T).

OMB No.: 0970–0345.

Description: Tribes use Form ACF–196T to report expenditures for the Tribal TANF grant. Authority to collect and report this information is found in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Public Law 104–193. Tribal entities with approved Tribal plans for implementation of the TANF program are required by Section 412(h) of the Social Security Act to report financial data. Form ACF–196T provides for the collection of data regarding Federal expenditures. Failure to collect this data would seriously compromise the Administration for Children and Families' (ACF) ability to monitor expenditures. This information is also used to estimate outlays and may be used to prepare ACF budget submissions to Congress. Financial management of the program would be seriously compromised if the expenditure data were not collected.

45 CFR part 286 Subpart E requires the strictest controls on funding requirements, which necessities review of documentation in support of Tribal expenditures for reimbursement.

Comments received from previous efforts to implement a similar Tribal TANF report Form ACF–196T were used to guide ACF in the development of the product presented with this submittal.

Respondents: All approved Tribal TANF Agencies. Those with consolidated Tribal TANF programs plans under 102–477 may submit the Tribal TANF Financial Report to BIA with a copy to: ACF Division of Mandatory Grants, 330 C Street SW., Washington, DC 20201. Or at their convenience may elect to use the On-Line Data Collection System to electronically submit their quarterly Tribal TANF Financial Report.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–196T	72	4	1.25	360

Estimated Total Annual Burden Hours: 360.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington DC 20201. Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2016–09123 Filed 4–19–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Form ACF–696T, "Child Care and Development Fund Annual Financial Report for Tribes"

OMB No.: 0970–0195.

Description: This form is used by Tribes and Tribal Organizations that have been approved as grantees to administer the Child Care and Development Fund program (CCDF). This form is submitted annually to report CCDF program expenditures to the Administration for Children and Families.

The authority to collect and report this information can be found in Section 658G of the Child Care and Development Block Grant Act of 1990 (Pub. L. 101–508), as amended, and in Federal regulations at 45 CFR 98.65(g) and 98.67(c)(1) which authorize the Secretary to require financial reports as necessary.

Respondents: Tribes and Tribal Organizations.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Form ACF–696T, "Child Care and Development Fund Annual Financial Report for Tribes"	272	1	6	1,632

Estimated Total Annual Burden Hours: 1,632.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW., Washington DC 20201. Attn: ACF Reports Clearance Officer. Email address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2016–09055 Filed 4–19–16; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–0973]

Comparability Protocols for Human Drugs and Biologics: Chemistry, Manufacturing, and Controls Information; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Comparability Protocols for Human Drugs and Biologics: Chemistry, Manufacturing, and Controls Information." This document is a revised version of a draft guidance that published in February 2003 entitled "Comparability Protocols: Chemistry, Manufacturing, and Controls Information." A related draft guidance entitled "Comparability Protocols—Protein Drug Products and Biological Products—Chemistry, Manufacturing, and Controls Information," that published in September 2003, was withdrawn on May 6, 2015.

The revised draft guidance provides recommendations to human drug and biologics manufacturers on implementing a chemistry, manufacturing, and controls (CMC) postapproval change(s) through the use of a comparability protocol (CP). By using a CP, manufacturers who fall within the scope of this guidance will not have to submit commercial-scale CMC information on postchange products to FDA before making the proposed change. This draft guidance is intended to establish a framework to promote manufacturing of quality drug products.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115 (g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by June 20, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Comments

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2016–D–0973 for "Comparability Protocols for Human Drugs and Biologics: Chemistry, Manufacturing, and Controls Information." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Stephen Moore, Center for Drug Evaluation and Research, Food and Drug Administration, Bldg. 21, Rm. 2012, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–7579 or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, Bldg. 71, Rm. 7268, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Comparability Protocols for Human Drugs and Biologics: Chemistry, Manufacturing, and Controls Information." This draft guidance is a revised version of a draft guidance that published in February 2003 entitled "Comparability Protocols: Chemistry, Manufacturing, and Controls Information." A related draft guidance entitled "Comparability Protocols—Protein Drug Products and Biological Products—Chemistry, Manufacturing, and Controls Information," which published in September 2003, was withdrawn on May 6, 2015 (80 FR 26059).

The revised draft guidance provides recommendations to holders of applications for human drugs and biologics on implementing a chemistry, manufacturing, controls (CMC) postapproval change(s) through the use of a comparability protocol (CP). The revised draft guidance applies to new drug applications (NDAs), abbreviated new drug applications (ANDAs), or biologics license applications (BLAs) regulated by the Center for Drug Evaluation and Research (CDER) or the Center for Biologics Evaluation and Research (CBER) or supplements following 21 CFR 314.70 or 21 CFR 601.12.

On February 25, 2003 (68 FR 8772), FDA announced the availability of the first draft version of this guidance. The public comment period closed on June 25, 2003. A number of comments were received, which the Agency considered carefully as it prepared this revised draft guidance.

We revised the guidance for the following reasons:

- To provide more flexibility regarding filing procedures for a notification of change in a condition established in an approved application.
- To include current pharmaceutical quality concepts.
- To add an appendix to address commonly asked questions.

This revised draft guidance provides recommendations to human drug manufacturers on implementing CMC postapproval change(s) through the use of a CP. By using an approved CP, manufacturers whom fall within the scope of this guidance will not have to submit commercial-scale CMC information on postchange products to FDA before making the proposed changes. The draft guidance is intended to establish a framework to promote manufacturing of quality drug products by employing the following:

- Effective use of knowledge and understanding of the product and manufacturing process.
- A robust control strategy.
- Risk management activities over a product's life cycle.
- An effective pharmaceutical quality system.

This draft guidance incorporates the modern regulatory concepts stated in the guidance for industry entitled "PAT—A Framework for Innovative Pharmaceutical Development, Manufacturing, and Quality Assurance," (*http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM070305.pdf*) the Pharmaceutical Current Good Manufacturing Practices for the 21st Century Initiative (*http://www.fda.gov/Drugs/DevelopmentApprovalProcess/Manufacturing/QuestionsandAnswersonCurrentGoodManufacturingPracticescGMPforDrugs/UCM071836*), the Critical Path Initiative (*http://www.fda.gov/scienceresearch/specialtopics/criticalpathinitiative/default.htm*), and the quality by design principles described in the guidance for industry entitled "Q8(R2) Pharmaceutical Development" (*http://www.fda.gov/ucm/groups/fdagov-public/@fdagov-drugs-gen/documents/document/ucm073507.pdf*). In publishing this draft guidance, FDA is communicating its expectations and support for the described approach.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on comparability protocols for applications regulated in CDER and CBER as described previously. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information requested in the draft guidance is covered under FDA regulations 21 CFR 314.50, 314.70, and 314.81(b)(2) for human drugs and 21 CFR 601.2 and 601.12 for biologics. The collection of information is approved under the following OMB Control Numbers: 0910–0001 for human drugs and 0910–0338 for biologics.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm, http://www.regulations.gov,* or *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm.*

Dated: April 14, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–09137 Filed 4–19–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0655]

Animal Generic Drug User Fee Act; Stakeholder Consultation Meetings on the Animal Generic Drug User Fee Act Reauthorization; Request for Notification of Stakeholder Intention To Participate

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for notification of participation.

SUMMARY: The Food and Drug Administration (FDA or Agency) is issuing this notice to request that public stakeholders notify FDA of their intent to participate in periodic consultation meetings on reauthorization of the Animal Generic Drug User Fee Act (AGDUFA). The statutory authority for AGDUFA expires September 30, 2018. The Federal Food, Drug, and Cosmetic Act (the FD&C Act) requires that FDA consult with a range of stakeholders—including patient and consumer advocacy groups, veterinary professionals, and scientific and academic experts—in developing recommendations for the next AGDUFA program, and hold discussions with these stakeholders at least once every 4 months during FDA's negotiations with the regulated industry. The purpose of this request for notification is to ensure continuity and progress in these regular discussions by establishing consistent stakeholder representation.

DATES: Submit notification of intention to participate in continued periodic stakeholder consultation meetings regarding AGDUFA reauthorization by May 16, 2016. These stakeholder meetings are expected to commence in June/July 2016 and will continue at least once every 4 months during reauthorization negotiations with the regulated industry. See the **SUPPLEMENTARY INFORMATION** section for further information regarding notification of intention to participate.

ADDRESSES: The stakeholder meetings will be held at the Food and Drug Administration, Center for Veterinary Medicine, 7519 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: Cassie Ravo, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–6866, FAX: 240–276–9744, *Cassie.Ravo@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

In 2013 Congress passed the Animal Generic Drug User Fee Amendments of 2013 (Pub. L. 113–14; AGDUFA II). The authority for AGDUFA II expires September 30, 2018. Without new legislation to reauthorize the program, FDA will no longer be able to collect user fees for future fiscal years to fund the generic new animal drug review process. Section 742(d)(1) of the FD&C Act (21 U.S.C. 379j–22(d)(1)) requires that FDA consult with a range of stakeholders in developing recommendations for consideration for the next AGDUFA program, including representatives from patient and consumer advocacy groups, veterinary professionals, and scientific and academic experts. To initiate this process of consultation, elsewhere in this issue of the **Federal Register,** we are announcing a public meeting to be held on May 16, 2016, where stakeholders and other members of the public will be given an opportunity to present their views on the reauthorization. The meeting and written comments submitted to the docket will provide critical input as the Agency prepares for reauthorization discussions. Section 742(d)(3) of the FD&C Act further requires that FDA continue meeting with these stakeholders at least once every 4 months during negotiations with the regulated industry to continue discussions of their views on the reauthorization, including suggested changes to the AGDUFA program.

FDA is issuing this **Federal Register** notice to request that stakeholders—including veterinary, patient and consumer groups, as well as scientific and academic experts—notify FDA of their intent to participate in the periodic consultation meetings on AGDUFA reauthorization. FDA believes that consistent stakeholder representation at these meetings will be important to ensure progress in these discussions. If you wish to participate in this part of the reauthorization process, please designate one or more representatives from your organization who will commit to attending these meetings and preparing for the discussions. Stakeholders who identify themselves through this notice will be included in all future stakeholder discussion while FDA negotiates with the regulated industry. If a stakeholder decides to participate in these meetings at a later time, they may still participate in remaining meetings by notifying FDA (see **ADDRESSES**). These stakeholder discussions will satisfy the requirement in section 742(d)(3) of the FD&C Act.

II. Notification of Intent To Participate in Periodic Stakeholder Consultation Meetings

If you intend to participate in continued periodic stakeholder consultation meetings regarding AGDUFA reauthorization, please submit notification by email to: *cvmagdufa@fda.hhs.gov* by May 16, 2016. Your email should contain complete contact information for each attendee, including name, title, affiliation, address, email address, telephone number, and notice of any special accommodations required due to a disability. Stakeholders will receive confirmation and additional information about the first meeting after FDA receives this notification.

Dated: April 12, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–09152 Filed 4–19–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0656]

Animal Drug User Fee Act; Stakeholder Consultation Meetings on the Animal Drug User Fee Act Reauthorization; Request for Notification of Stakeholder Intention To Participate

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for notification of participation.

SUMMARY: The Food and Drug Administration (FDA or Agency) is issuing this notice to request that public stakeholders notify FDA of their intent to participate in periodic consultation meetings on reauthorization of the Animal Drug User Fee Act (ADUFA). The statutory authority for ADUFA expires September 30, 2018. The Federal Food, Drug, and Cosmetic Act (the FD&C Act) requires that FDA consult with a range of stakeholders—including patient and consumer advocacy groups, veterinary professionals, and scientific and academic experts—in developing recommendations for the next ADUFA program, and hold discussions with these stakeholders at least once every 4 months during FDA's negotiations with the regulated industry. The purpose of this request for notification is to ensure continuity and progress in these regular discussions by establishing consistent stakeholder representation.

DATES: Submit notification of intention to participate in continued periodic stakeholder consultation meetings regarding ADUFA reauthorization by May 16, 2016. These stakeholder meetings are expected to commence in September/October 2016 and will continue at least once every 4 months during reauthorization negotiations with the regulated industry. See the **SUPPLEMENTARY INFORMATION** section for further information regarding notification of intention to participate.

ADDRESSES: The stakeholder meetings will be held at the Food and Drug Administration, Center for Veterinary Medicine, 7519 Standish Pl., Rockville, MD 20855.

FOR FURTHER INFORMATION CONTACT: Cassie Ravo, Center for Veterinary Medicine, Food and Drug Administration,7519 Standish Pl., Rockville, MD 20855, 240–402–6866, FAX: 240–276–9744, *Cassie.Ravo@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

In 2013 Congress passed the Animal Drug User Fee Amendments of 2013 (Pub. L. 113–14; ADUFA III). The authority for ADUFA III expires September 30, 2018. Without new legislation to reauthorize the program, FDA will no longer be able to collect user fees for future fiscal years to fund the animal drug review process. Section 740A(d)(1) of the FD&C Act (21 U.S.C. 379j–13(d)(1)) requires that FDA consult with a range of stakeholders in developing recommendations for consideration for the next ADUFA program, including representatives from patient and consumer advocacy groups, veterinary professionals, and scientific and academic experts. To initiate this process of consultation, elsewhere in this issue of the **Federal Register**, we are announcing a public meeting to be held on May 16, 2016, where stakeholders and other members of the public will be given an opportunity to present their views on the reauthorization. The meeting and written comments submitted to the docket will provide critical input as the Agency prepares for reauthorization discussions. Section 740A(d)(3) of the FD&C Act further requires that FDA continue meeting with these stakeholders at least once every 4 months during negotiations with the regulated industry to continue discussions of their views on the reauthorization, including suggested changes to the ADUFA program.

FDA is issuing this **Federal Register** notice to request that stakeholders—including veterinary, patient and consumer groups, as well as scientific and academic experts—notify FDA of their intent to participate in the periodic consultation meetings on ADUFA reauthorization. FDA believes that consistent stakeholder representation at these meetings will be important to ensure progress in these discussions. If you wish to participate in this part of the reauthorization process, please designate one or more representatives from your organization who will commit to attending these meetings and preparing for the discussions. Stakeholders who identify themselves through this notice will be included in all future stakeholder discussion while FDA negotiates with the regulated industry. If a stakeholder decides to participate in these meetings at a later time, they may still participate in remaining meetings by notifying FDA (see **ADDRESSES**). These stakeholder discussions will satisfy the requirement in section 740A(d)(3) of the FD&C Act.

II. Notification of Intent To Participate in Periodic Stakeholder Consultation Meetings

If you intend to participate in continued periodic stakeholder consultation meetings regarding ADUFA reauthorization, please submit notification by email to *cvmadufa@fda.hhs.gov* by May 16, 2016. Your email should contain complete contact information for each attendee, including name, title, affiliation, address, email address, telephone number, and notice of any special accommodations required due to a disability. Stakeholders will receive confirmation and additional information about the first meeting after FDA receives this notification.

Dated: April 12, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–09151 Filed 4–19–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–0230]

Technical Performance Assessment of Digital Pathology Whole Slide Imaging Devices; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a guidance entitled "Technical Performance Assessment of Digital Pathology Whole Slide Imaging Devices." This guidance provides industry and Agency staff with recommendations regarding the technical performance assessment data for the evaluation of a digital whole slide imaging (WSI) system. The guidance provides suggestions on how to best characterize the technical aspects that are relevant to WSI performance for their intended use and determine any possible limitations that might affect their safety and effectiveness.

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2015–D–0230 for "Technical Performance Assessment of Digital Pathology Whole Slide Imaging Devices; Guidance for Industry and Food and Drug Administration Staff." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled "Technical Performance Assessment of Digital Pathology Whole Slide Imaging Devices" to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Nicholas Anderson, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5662, Silver Spring, MD 20993–0002, 301–796–4310; or Aldo Badano, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 62, Rm. 3116, Silver Spring, MD 20993–0002, 301–796–2534.

SUPPLEMENTARY INFORMATION:

I. Background

Recent technological advances in digital microscopy, in particular the development of whole slide scanning systems, have accelerated the adoption of digital imaging in pathology, similar to the digital transformation that radiology departments have experienced over the last decade. FDA regulates WSI system manufacturers to help ensure that the images produced for intended clinical uses are safe and effective for such purposes. Essential to the regulation of these systems is the understanding of the technical performance of the WSI system and the components in the imaging chain—from image acquisition to image display, and their effect on pathologist's diagnostic performance and workflow.

This guidance provides industry and Agency staff with recommendations regarding the technical performance assessment for regulatory evaluation of a digital WSI system. This document does not cover the clinical submission data that may be necessary to support approval or clearance. The guidance provides suggestions on how to best characterize the technical aspects that are relevant to WSI performance for their intended use and determine any possible limitations that might affect their safety and effectiveness.

In the **Federal Register** of February 25, 2015 (80 FR 10122), FDA announced the availability of the draft guidance and interested persons were invited to comment by May 25, 2015.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on technical performance assessment of digital pathology whole slide imaging devices. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by downloading an electronic copy from the Internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* Guidance documents are also available at *http://www.regulations.gov.* Persons unable to download an electronic copy of "Technical Performance Assessment of Digital Pathology Whole Slide Imaging Devices" may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1400053 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E (premarket notification) have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 814 (premarket approval) have been approved under OMB control number 0910–0231; and the collections of information in 21 CFR part 801 and 21 CFR 809.10 (labeling) have been approved under OMB control number 0910–0485.

Dated: April 13, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–09140 Filed 4–19–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–3056]

Distributor Labeling for New Animal Drugs; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of guidance for industry #231 entitled "Distributor Labeling for New Animal Drugs." This guidance discusses FDA's current thinking with respect to the factors it considers in determining whether to take regulatory action against distributor labeling for a new animal drug that differs from the labeling approved as part of a new animal drug application or abbreviated new animal drug application in ways other than those permitted by regulation.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2015–D–3056 for "Distributor Labeling for New Animal Drugs." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Submit written requests for single copies of the guidance to the Policy and Regulations Staff (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Dorothy McAdams, Center for Veterinary Medicine, Division of Surveillance (HFV–210), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–5763, email: *dorothy.mcadams@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 10, 2015 (80 FR 54568), FDA published the notice of availability for a draft guidance entitled "Distributor Labeling for New Animal Drugs" giving interested persons until November 9, 2015, to comment on the draft guidance. FDA received no comments on the draft guidance. The guidance announced in this notice finalizes the draft guidance dated September 2015.

II. Significance of Guidance

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on distributor labeling for new animal drugs. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 514.80 have been approved under OMB control number 0910–0284.

IV. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm* or *http://www.regulations.gov.*

Dated: April 13, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–09141 Filed 4–19–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–N–1024]

Preparation for International Cooperation on Cosmetics Regulation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

The Food and Drug Administration (FDA or we) is announcing a public meeting entitled "International Cooperation on Cosmetics Regulation (ICCR)—Preparation for ICCR–10 Meeting." The purpose of the meeting is to invite public input on various topics pertaining to the regulation of cosmetics. We may use this input to help us prepare for the ICCR–10 meeting that will be held July 12–14, 2016, in Bethesda, MD.

Date and Time: The public meeting will be held on June 15, 2016, from 2 p.m. to 4 p.m.

Location: This meeting will be held at the Food and Drug Administration, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Pkwy., Wiley Auditorium, College Park, MD 20740.

Contact Person: Maria Rossana (Rosemary) Cook, Office of Cosmetics and Colors, Food and Drug Administration, 4300 River Rd., College Park, MD 20740, *maria.cook@fda.hhs.gov*, or FAX: 301–436–2975.

Registration and Requests for Oral Presentations: Send registration information (including your name, title, firm name, address, telephone number, fax number, and email address), written material, and requests to make an oral presentation, to the contact person by June 1, 2016.

If you need special accommodations due to a disability, please contact Maria Rossana (Rosemary) Cook at least 7 days in advance of the meeting.

SUPPLEMENTARY INFORMATION: You may present proposals for future ICCR agenda items, data, information, or views, orally or in writing, on issues pending at the public meeting. Time allotted for oral presentations may be limited to 10 minutes or less for each presenter. If you wish to make an oral presentation, you should notify the contact person by June 1, 2016, and submit a brief statement of the general nature of the evidence or arguments that you wish to present, your name, address, telephone number, fax number, and email address, and indicate the approximate amount of time you need to make your presentation.

Transcripts: Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may also be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20850. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. The Freedom of Information office address is available on the Agency's Web site at *http://www.fda.gov.*

The Purpose of the Multilateral Framework on the ICCR: The purpose of the multilateral framework on the ICCR is to pave the way for the removal of regulatory obstacles to international trade while maintaining global consumer protection.

ICCR is a voluntary international group of cosmetics regulatory authorities from Brazil, Canada, the European Union, Japan, and the United States of America. These regulatory authority members will enter into constructive dialogue with their relevant cosmetics industry trade associations and public advocacy groups. Currently, the ICCR members are: The Brazilian Health Surveillance Agency; Health Canada; the European Commission Directorate-General for Internal Market, Industry, Entrepreneurship, and Small and Medium-sized Enterprises; the Ministry of Health, Labor, and Welfare of Japan; and FDA. All decisions made by consensus will be compatible with the laws, policies, rules, regulations, and directives of the respective administrations and governments. Members will implement and/or promote actions or documents within their own jurisdictions and seek convergence of regulatory policies and practices. Successful implementation will need input from stakeholders.

Agenda: We will make the agenda for the public meeting available on the Internet at *http://www.fda.gov/Cosmetics/InternationalActivities/ICCR/default.htm.* Depending on the number of requests for oral presentations, we intend to have an agenda available by June 8, 2016. We may use the information that you provide to us during the public meeting to help us prepare for the July 12–14, 2016, ICCR–10 meeting.

Dated: April 13, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–09143 Filed 4–19–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0375]

Agency Information Collection Activities; Proposed Collection; Comment Request; Agreement for Shipment of Devices for Sterilization

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection requirements relating to shipment of nonsterile devices that are to be sterilized elsewhere or are shipped to other establishments for further processing, labeling, or repacking.

DATES: Submit either electronic or written comments on the collection of information by June 20, 2016.

ADDRESSES: You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2013–N–0375 for "Agency Information Collection Activities; Proposed Collection; Comment Request; Agreement for Shipment of Devices for Sterilization." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov*. Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm*.

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Agreement for Shipment of Devices for Sterilization—21 CFR 801.150—OMB Control Number 0910–0131—Extension

Under sections 501(c) and 502(a) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 351(c) and 352(a)), nonsterile devices that are labeled as sterile but are in interstate transit to a facility to be sterilized are adulterated and misbranded. FDA regulations in § 801.150(e) (21 CFR 801.150(e)) establish a control mechanism by which firms may manufacture and label medical devices as sterile at one establishment and ship the devices in interstate commerce for sterilization at another establishment, a practice that facilitates the processing of devices and is economically necessary for some firms.

Under § 801.150(e)(1), manufacturers and sterilizers may sign an agreement containing the following: (1) Instructions for maintaining accountability of the number of units in each shipment, (2) acknowledgment that the devices that are nonsterile are being shipped for further processing, and (3) specifications for sterilization processing. This agreement allows the manufacturer to ship misbranded products to be sterilized without initiating regulatory action and provides FDA with a means to protect consumers from use of nonsterile products. During routine plant inspections, FDA normally reviews agreements that must be kept for 2 years after final shipment or delivery of devices (§ 801.150(a)(2)).

The respondents to this collection of information are device manufacturers and contract sterilizers. FDA's estimate of the reporting burden is based on data obtained from industry over the past several years. It is estimated that each of the firms subject to this requirement prepares an average of 20 written agreements each year. This estimate varies greatly, from 1 to 100, because some firms provide sterilization services on a part-time basis for only one customer, while others are large facilities with many customers. The average time required to prepare each written agreement is estimated to be 4 hours. This estimate varies depending on whether the agreement is the initial agreement or an annual renewal, on the format each firm elects to use, and on the length of time required to reach agreement. The estimate applies only to those portions of the written agreement that pertain to the requirements imposed by this regulation. The written agreement generally also includes contractual agreements that are a usual and customary business practice. The recordkeeping requirements of § 801.150(a)(2) consist of making copies and maintaining the records required under the third-party disclosure section of this collection.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity/21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Record retention, § 801.150(a)(2)	90	20	1,800	0.5	900

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL THIRD-PARTY DISCLOSURE BURDEN [1]

Activity/21 CFR section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Agreement and labeling requirements, § 801.150(e)	90	20	1,800	4	7,200

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: April 14, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–09149 Filed 4–19–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0655]

Animal Generic Drug User Fee Act; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting on the Animal Generic Drug User Fee Act (AGDUFA). FDA invites public comment on the AGDUFA program and suggestions regarding the features FDA should propose for the next AGDUFA program.

DATES: The meeting will be held on May 16, 2016, from 1 p.m. to 4 p.m. In order to be taken into consideration before the public meeting, submit either electronic or written comments to the docket by May 4, 2016. To permit the widest possible opportunity to obtain comments on all aspects of the public meeting, the docket will remain open for comment through December 1, 2017. In addition to being publicly viewable at *http://www.regulations.gov,* comments received by June 16, 2016, suggesting changes to the program, will also be published on *http://www.fda.gov/ForIndustry/UserFees/AnimalGenericDrugUserFeeActAGDUFA/ucm270232.htm.* See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The meeting will be held at the Food and Drug Administration, 7519 Standish Pl., 3rd floor, Rm. A, Rockville, MD 20855.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2011–N–0655 for "Animal Generic Drug User Fee Act; Public Meeting; Request for Comments." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Cassie Ravo, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–6866, FAX: 240–276–9744, *Cassie.Ravo@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The authority for AGDUFA expires September 30, 2018. Without new legislation, FDA will no longer have the authority to collect user fees to fund the generic new animal drug review process. Prior to beginning negotiations with the regulated industry on AGDUFA reauthorization, section 740A(d)(2) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 379j–13(d)(2)) requires FDA to: (1) Publish a notice in the **Federal Register** requesting public input on the reauthorization; (2) hold a public meeting at which the public may present its views on the reauthorization including specific suggestions for changes to the goals referred in section 740A(a) of FD&C Act; (3) provide a period of 30 days after the public meeting to obtain written comments from the public suggesting changes; and (4) publish the comments on FDA's Web site. FDA is holding a public meeting to gather information on what FDA should consider including in the reauthorization of AGDUFA. FDA is interested in responses from the public on the following two general questions and welcomes other pertinent information that stakeholders would like to share:

1. What is your assessment of the overall performance of the AGDUFA program thus far?
2. What aspects of AGDUFA should be retained, changed, or discontinued to further strengthen and improve the program?

The following information is provided to help potential meeting participants better understand the history and evolution of AGDUFA and its current status.

II. Background

The Animal Generic Drug User Fee Act enacted in 2008 (Pub. L. 110–316; hereinafter referred to as "AGDUFA I") amended the FD&C Act to authorize FDA's first ever generic new animal drug user fee program. AGDUFA I provided FDA with additional funds to enhance the performance of the generic new animal drug review process. Furthermore, the authorization of AGDUFA I enabled FDA's continued assurance that generic new animal drug products are safe and effective, and enabled FDA's continued support for lower-cost alternatives to brand drugs for consumers. Under AGDUFA I, FDA agreed to meet review performance goals for certain submissions over 5 years from fiscal year (FY) 2009 through FY 2013. These review performance goals strive to expedite the review of abbreviated new animal drug applications (ANADAs) and reactivations, supplemental ANADAs, and generic investigational new animal drug (JINAD) submissions.

Under AGDUFA I, the industry agreed to pay user fees that are available to FDA, in addition to appropriated funds, to spend on the generic new animal drug review process. Moreover, FDA's authority to collect user fees is contingent on a certain level of spending from appropriated funds, as adjusted for inflation.

AGDUFA I established increasingly stringent review performance goals over a 5-year period from FY 2009 through FY 2013. By the 5th and final year of AGDUFA I, FDA agreed to review and act on 90 percent of the following submission types within the specified timeframes:

- Original ANADAs and reactivations within 270 days of the submission date.
- Administrative ANADAs (ANADAs submitted after all scientific decisions have been made during the JINAD process, *i.e.*, prior to the submission of the original ANADAs) within 100 days after the submission date.
- Manufacturing supplemental ANADAs and reactivations within 270 days after the submission date.
- JINAD study submissions within 270 days after the submission date.
- JINAD protocol submissions within 100 days after submission date. JINAD protocol submissions consist of protocols without substantial data that FDA and the sponsor consider to be an essential part of the basis to make the decision to approve or not approve an ANADA or supplemental ANADA.

The additional resources provided under AGDUFA I enabled FDA to completely eliminate the backlog of ANADA and JINAD submissions by August 2010.

In 2013, before AGDUFA I expired, Congress passed the Animal Generic Drug User Fee Amendments of 2013 (Pub. L. 113–14; hereinafter referred to as "AGDUFA II") which included an extension of AGDUFA for an additional 5 years (FY 2014 to FY 2018). AGDUFA II is maintaining the AGDUFA I performance goals regarding work queue procedures, timely meetings with industry, review of administrative ANADAs, review of protocols without substantial data, and amending similar applications and submissions. In addition, FDA agreed to the following program enhancements to further improve review processes:

- Developing a shortened review time process for certain ANADA and JINAD submissions.
- Permitting certain prior approval manufacturing supplements to be resubmitted as "Supplement-Changes Being Effected in 30 days."
- Developing guidance for a two-phased Chemistry Manufacturing and Controls technical section submission and review process under the JINAD file.
- Permitting comparability protocols to be submitted as protocols without substantial data in a JINAD file.
- Improving timeliness and predictability of foreign pre-approval inspections.
- Developing and implementing a question-based review process for the bioequivalence submissions.

FDA has published a number of reports that provide useful background on AGDUFA I and AGDUFA II. AGDUFA-related **Federal Register** notices, guidances, legislation, performance reports, and financial reports and plans can be found at: *http://www.fda.gov/ForIndustry/UserFees/AnimalGenericDrugUserFeeActAGDUFA/default.htm.*

III. Meeting Information

A. Meeting Format

In general, the meeting format will include presentations by FDA followed by an open public comment period. Registered speakers for the open public comments will be grouped and scheduled in advance of the meeting based on their affiliation (scientific and academic experts/veterinary professionals, representatives of consumer advocacy groups, and the regulated industry) and timing of their registration. FDA presentations are planned from 1 p.m. until 2 p.m. The open public comment portion of the meeting for registered and scheduled speakers is planned to begin at 2 p.m. An opportunity for additional open public comments from meeting attendees will commence following the registered presentations, if time permits.

FDA policy issues are beyond the scope of these reauthorization discussions. Accordingly, the presentations should focus on process enhancements and funding issues, not on policy issues.

B. Meeting Questions

Please consider the following questions for this meeting:

1. What is your assessment of the overall performance of the AGDUFA program thus far?
2. What aspects of AGDUFA should be retained, changed, or discontinued to further strengthen and improve the program?

C. Registration

If you wish to attend and/or present at the meeting, please register by email to *cvmagdufa@fda.hhs.gov* by May 4, 2016. Your email should contain complete contact information for each attendee, including name, title, affiliation, address, email, and telephone number. Also, please self-identify as a member of one of the following stakeholder categories: Scientific or academic experts; veterinary professionals; patients and consumer advocacy groups; or the regulated industry and whether you are requesting a scheduled presentation. Registration is free and available on a first-come, first-served basis. Early registration is recommended since seating is limited. FDA may limit the number of participants from each organization based on space constraints. Registrants will receive confirmation once their registrations are accepted. Onsite registration on the day of the public meeting will be based on space availability. FDA will try to accommodate all persons who wish to make a presentation. The time allotted for presentations may depend on the number of persons who wish to speak.

If you need special accommodations due to a disability, please contact Cassie Ravo (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days before the meeting.

D. Transcripts

Please be advised that as soon as the transcript is available, it will be accessible at *http://www.fda.gov/ForIndustry/UserFees/AnimalGenericDrugUserFeeActAGDUFA/ucm270232.htm.* It may be viewed at the Division of Dockets Management (see **ADDRESSES**). A transcript will also be made available in either hard copy or on CD–ROM, after submission of a Freedom of Information request. The Freedom of Information office address is available on the Agency's Web site at *http://www.fda.gov.*

Dated: April 12, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–09150 Filed 4–19–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0656]

Animal Drug User Fee Act; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting on the Animal Drug User Fee Act (ADUFA). FDA invites public comment on the ADUFA program and suggestions regarding the features FDA should propose for the next ADUFA program.

DATES: The meeting will be held on May 16, 2016, from 9 a.m. to 12 p.m. In order to be taken into consideration before the public meeting, submit either electronic or written comments to the docket by May 4, 2016. To permit the widest possible opportunity to obtain comments on all aspects of the public meeting, the docket will remain open for comment throughout the reauthorization of ADUFA, until December 1, 2017. In addition to being publicly viewable at *http://www.regulations.gov,* comments received by June 16, 2016, suggesting changes to the program, will also be published on *http://www.fda.gov/ForIndustry/UserFees/AnimalDrugUserFeeActADUFA/ucm042891.htm.* See the **SUPPLEMENTARY INFORMATION** section for registration date and information.

ADDRESSES: The meeting will be held at the Food and Drug Administration, 7519 Standish Pl., 3rd floor, Rm. A, Rockville, MD 20855.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *http://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *http://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand delivery/Courier (for written/paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Division of Dockets Management, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA–2011–N–0656 for the "Animal Drug User Fee Act; Public Meeting." Received comments will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at *http://www.regulations.gov* or at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *http://www.regulations.gov.* Submit both copies to the Division of Dockets Management. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *http://www.fda.gov/regulatoryinformation/dockets/default.htm.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Cassie Ravo, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–6866, FAX: 240–276–9744, *Cassie.Ravo@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The authority for ADUFA expires September 30, 2018. Without new legislation, FDA will no longer have the authority to collect user fees to fund the new animal drug review process. Prior to beginning negotiations with the regulated industry on ADUFA reauthorization, section 740A(d)(2) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 379j–13 (d)(2)) requires FDA to: (1) Publish a notice in the **Federal Register** requesting public input on the reauthorization; (2) hold a public meeting at which the public may present its views on the reauthorization including specific suggestions for changes to the goals referred in section 740A(a) of FD&C Act; (3) provide a period of 30 days after the public meeting to obtain written comments from the public suggesting changes; and (4) publish the comments on FDA's Web site. FDA is holding a public meeting to gather information on what FDA should consider including in the reauthorization of ADUFA. FDA is interested in responses from the public on the following two general questions and welcomes other pertinent information that stakeholders would like to share:

1. What is your assessment of the overall performance of the ADUFA program thus far?
2. What aspects of ADUFA should be retained, changed, or discontinued to further strengthen and improve the program?

The following information is provided to help potential meeting participants better understand the history and evolution of ADUFA and its current status.

II. Background

The Animal Drug User Fee Act enacted in 2003 (Pub. L 108–130; hereinafter referred to as "ADUFA I") authorized FDA to collect user fees that were dedicated to expediting the review of animal drug applications in accordance with certain performance goals. The implementation of ADUFA I provided a significant funding increase for new animal drug application review process, and enabled FDA to increase the number of staff dedicated to the new animal drug application review process by 30 percent from 2003 through 2008.

Under ADUFA I, the industry agreed to pay user fees that are available to FDA, in addition to appropriated funds, to spend on the new animal drug application review process. Moreover, FDA's authority to collect user fees is contingent on a certain level of spending from appropriated funds, as adjusted for inflation.

As part of ADUFA I, FDA established review performance goals that have been phased in over a 5-year period. These performance goals set from FY 2004 to FY 2008 were intended to achieve progressive, yearly improvements in the time for review of new animal drug applications. By the 5th and final year of ADUFA ending on September 30, 2008, FDA agreed to review and act on 90 percent of the following submission types within the specified timeframes:

- New animal drug applications (NADAs) and reactivations of such applications within 180 days after submission date.
- Nonmanufacturing supplemental NADAs (that is supplemental NADAs for which safety or effectiveness data are required) and reactivations of such supplemental applications within 180 days after submission date.
- Manufacturing supplemental NADAs and reactivations of such supplemental applications within 120 days after submission date.
- Investigational new animal drug (INAD) study submissions within 180 days after submission date.
- INAD submissions consisting of protocols, that FDA and the sponsor consider to be an essential part of making the decision to approve or not approve a NADA or supplemental NADA, without substantial data, within 60 days after submission date.
- Administrative NADAs submitted after all scientific decisions have been made in the INAD process (that is, prior to submission of the animal drug application) within 60 days after submission date.

In 2008, before ADUFA I expired, Congress passed the Animal Drug User Fee Amendments of 2008 (Pub. L. 110–316; hereinafter referred to as "ADUFA II") which included an extension of ADUFA for an additional 5 years (FY 2009 to FY 2013). ADUFA II performance goals were established based on ADUFA I FY 2008 review timeframes. In addition, FDA agreed to the following program enhancements to reduce review cycles and improve communications during reviews:

- Incorporating an "end-review amendment" process to amend pending submissions to achieve a complete review decision sooner and reduce the number of review cycles.
- Developing an electronic submission tool that allows industry to submit drug applications electronically.
- Participating with industry in public workshops on mutually agreed upon topics.
- Improving communications by enhancing the timeliness and predictability of foreign pre-approval inspections.

In 2013, before ADUFA II expired, Congress passed the Animal Drug User Fee Amendments of 2013 (Pub. L. 113–14; hereinafter referred to as "ADUFA III") which included an extension of ADUFA for an additional 5 years (FY 2014 to FY 2018). ADUFA III is maintaining the ADUFA II performance goals regarding work queue procedures, timely meetings with industry, preapproval foreign inspections, and review of NADAs (including administrative NADAs), supplemental NADAs, INAD protocol submissions, and INAD study submissions. In addition, FDA agreed to the following program enhancements to further improve the review process:

- Discontinuing the end-review amendment procedures and replacing them with a shorter review time process for sponsors providing certain NADA and INAD submissions through the eSubmitter electronic submission tool.
- Implementing a new sentinel submission type and decreasing review time for certain labeling supplements.
- Decreasing the review time for microbial food safety hazard characterization submissions.
- Developing guidance for a two-phased Chemistry, Manufacturing, and Controls technical section submission and review process under the INAD file.

- Permitting certain prior approval manufacturing supplements to be resubmitted as "Supplement—Changes Being Effected in 30 days."
- Permitting comparability protocols to be submitted as protocols without substantial data in an INAD file.
- Developing a process where supporting information for pre-submission conferences and INAD protocols without data submissions can be submitted early.
- Exploring the feasibility of pursuing statutory revisions that may modify the current requirements that the use of multiple new animal drugs in the same medicated feed be subject to an approved application.
- Exploring the feasibility of pursuing statutory revisions that may expand the use of conditional approvals to other appropriate categories of new animal drug applications.

FDA has published a number of reports that provide useful background on ADUFA I, ADUFA II, and ADUFA III. ADUFA-related **Federal Register** notices, guidances, legislation, performance reports, and financial reports and plans can be found at: *http://www.fda.gov/ForIndustry/UserFees/AnimalDrugUserFeeActADUFA/default.htm.*

III. Meeting Information

A. Meeting Format

In general, the meeting format will include presentations by FDA followed by an open public comment period. Registered speakers for the open public comments will be grouped and scheduled in advance of the meeting based on their affiliation (scientific and academic experts/veterinary professionals, representatives of consumer advocacy groups, and the regulated industry) and timing of registration. FDA presentations are planned from 9 a.m. until 10 a.m. The open public comment portion of the meeting for registered and scheduled speakers is planned to begin at 10 a.m. An opportunity for additional open public comments from meeting attendees will commence following the registered presentations, if time permits.

FDA policy issues are beyond the scope of these reauthorization discussions. Accordingly, the presentations should focus on process enhancements and funding issues, not on policy issues.

B. Meeting Questions

Please consider the following questions for this meeting:

1. What is your assessment of the overall performance of the ADUFA III program thus far?
2. What aspects of ADUFA should be retained, changed, or discontinued to further strengthen and improve the program?

C. Registration

If you wish to attend and/or present at the meeting, please register by email to *cvmadufa@fda.hhs.gov* by May 4, 2016. Your email should contain complete contact information for each attendee, including name, title, affiliation, address, email, and phone number. Also, please self-identify as a member of one of the following stakeholder categories: Scientific or academic experts; veterinary professionals; patients and consumer advocacy groups; or the regulated industry and whether you are requesting a scheduled presentation. Registration is free and available on a first-come, first-served basis. Early registration is recommended since seating is limited. FDA may limit the number of participants from each organization based on space constraints. Registrants will receive confirmation once their registrations are accepted. Onsite registration on the day of the public meeting will be based on space availability. FDA will try to accommodate all persons who wish to make a presentation. The time allotted for presentations may depend on the number of persons who wish to speak.

If you need special accommodations due to a disability, please contact Cassie Ravo (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days before the meeting.

D. Transcripts

Please be advised that as soon as the transcript is available, it will be accessible at *http://www.fda.gov/ForIndustry/UserFees/AnimalDrugUserFeeActADUFA/ucm042891.htm.* It may be viewed at the Division of Dockets Management (see **ADDRESSES**). A transcript will also be made available in either hard copy or on CD–ROM, after submission of a Freedom of Information request. The Freedom of Information office address is available on the Agency's Web site at *www.fda.gov.*

Dated: April 12, 2016.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2016–09148 Filed 4–19–16; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by Section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States Court of Federal Claims, 717 Madison Place NW., Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 08N146B, Rockville, MD 20857; (301) 443–6593, or visit our Web site at: *http://www.hrsa.gov/vaccinecompensation/index.html.*

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding.

The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR

100.3. This Table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that "[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**." Set forth below is a list of petitions received by HRSA on March 1, 2016, through March 31, 2016. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

a. "[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by" one of the vaccines referred to in the Table, or

b. "[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Healthcare Systems Bureau, 5600 Fishers Lane, 08N146B, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Dated: April 14, 2016.

James Macrae,

Acting Administrator.

List of Petitions Filed

1. Nina Kleinberg, Holyoke, Massachusetts, Court of Federal Claims No: 16–0287V
2. Mary Agresti, Henderson, Nevada, Court of Federal Claims No: 16–0290V
3. Gail M. Schrank, Sussex, Wisconsin, Court of Federal Claims No: 16–0292V
4. Yolanda Cartagena, Wareham, Massachusetts, Court of Federal Claims No: 16–0293V
5. Charles A. Hall, Ph.D., Greensboro, North Carolina, Court of Federal Claims No: 16–0294V
6. Angel Villa, Dallas, Texas, Court of Federal Claims No: 16–0295V
7. Robert W. Montague, Chattanooga, Tennessee, Court of Federal Claims No: 16–0298V
8. Joshua Howard, Waupun, Wisconsin, Court of Federal Claims No: 16–0299V
9. Charles Moore, Southside, Alabama, Court of Federal Claims No: 16–0300V
10. Judith Marjorie Tipton, Asheville, North Carolina, Court of Federal Claims No: 16–0303V
11. Maya Sandoval, Oakland, California, Court of Federal Claims No: 16–0304V
12. Ronald Kass, Stockton, California, Court of Federal Claims No: 16–0305V
13. Heidi Domke, Baltimore, Maryland, Court of Federal Claims No: 16–0307V
14. Alan L. Jones, Bradenton, Florida, Court of Federal Claims No: 16–0308V
15. Patricia Zuckerman, Toms River, New Jersey, Court of Federal Claims No: 16–0311V
16. Kristin Denbow, St. Louis, Missouri, Court of Federal Claims No: 16–0312V
17. Paula Absolon, Dallas, Texas, Court of Federal Claims No: 16–0313V
18. Don Knobbe, St. Louis, Missouri, Court of Federal Claims No: 16–0315V
19. Jessica R. Martin on behalf of K.M., Thomasville, North Carolina, Court of Federal Claims No: 16–0318V
20. Jewel Dailey, Canastota, New York, Court of Federal Claims No: 16–0319V
21. Christine Miners, Sarasota, Florida, Court of Federal Claims No: 16–0320V
22. Phillip Herrera, Waupun, Wisconsin, Court of Federal Claims No: 16–0321V
23. Diane Chandler, Boston, Massachusetts, Court of Federal Claims No: 16–0322V
24. Christine Reynolds, Boston, Massachusetts, Court of Federal Claims No: 16–0323V
25. Mark Clement and Shannon Clement on behalf of J.C., Boston, Massachusetts, Court of Federal Claims No: 16–0324V
26. Robert Raiche, Boston, Massachusetts, Court of Federal Claims No: 16–0325V
27. Eric Reynolds, Flint, Michigan, Court of Federal Claims No: 16–0330V
28. Jerry Santoni, Phoenix, Arizona, Court of Federal Claims No: 16–0331V
29. Dorothy Sicard on behalf of S.S., Phoenix, Arizona, Court of Federal Claims No: 16–0332V
30. Shelly M. Pinckard, Pensacola, Florida, Court of Federal Claims No: 16–0333V
31. Sarah Fields, Edwards AFB, California, Court of Federal Claims No: 16–0335V
32. Deborah Gilbert, Dresher, Pennsylvania, Court of Federal Claims No: 16–0337V
33. Davika Lochan, Dresher, Pennsylvania, Court of Federal Claims No: 16–0338V
34. Jonathan Catrow, Edgewater, Maryland, Court of Federal Claims No: 16–0339V
35. Hilda Almanzar, Hainesport, New Jersey, Court of Federal Claims No: 16–0340V
36. Paul Hillen, Dresher, Pennsylvania, Court of Federal Claims No: 16–0341V
37. Stephen Schmidt, Dresher, Pennsylvania, Court of Federal Claims No: 16–0342V
38. Heather Gillotti, Dresher, Pennsylvania, Court of Federal Claims No: 16–0343V
39. Candace L. Holmes, Mocksville, North Carolina, Court of Federal Claims No: 16–0349V

40. John GowanWellesley, Massachusetts, Court of Federal Claims No: 16–0350V
41. Katherine Irvin on behalf of Cuba Woods, Culver City, California, Court of Federal Claims No: 16–0351V
42. Dufhane Hyde, Sr. on behalf of Dufhane Hyde, Jr., Deceased, Bloomfield, Connecticut, Court of Federal Claims No: 16–0354V
43. James Hooper, Dresher, Pennsylvania, Court of Federal Claims No: 16–0355V
44. Russell Burden, Boston, Massachusetts, Court of Federal Claims No: 16–0359V
45. John Dakota Jackson, Spokane, Washington, Court of Federal Claims No: 16–0361V
46. Martha Worlein, Wichita, Kansas, Court of Federal Claims No: 16–0364V
47. Stephen Knowles, McLean, Virginia, Court of Federal Claims No: 16–0365V
48. Shelly Norris, Sarasota, Florida, Court of Federal Claims No: 16–0366V
49. Sophia Herrera, Dallas, Texas, Court of Federal Claims No: 16–0372V
50. Cori Marshall, Boise, Idaho, Court of Federal Claims No: 16–0373V
51. Larry Gordon, Limon, Colorado, Court of Federal Claims No: 16–0374V
52. Debra Baker, Baraboo, Wisconsin, Court of Federal Claims No: 16–0375V
53. Carolyn Wagner, Beverly Hills, California, Court of Federal Claims No: 16–0377V
54. Roger Schurg, Frostburg, Maryland, Court of Federal Claims No: 16–0378V
55. Lisa Applegate, Beverly Hills, California, Court of Federal Claims No: 16–0379V
56. Marlene Cimons, Dresher, Pennsylvania, Court of Federal Claims No: 16–0380V
57. Rebecca Kemak, Phoenix, Arizona, Court of Federal Claims No: 16–0381V
58. Maria Del Pilar Varela-Avila, Dallas, Texas, Court of Federal Claims No: 16–0382V
59. Deborah M. Williamson, Pittsburgh, Pennsylvania, Court of Federal Claims No: 16–0384V
60. Thomas Tutt, Albuquerque, New Mexico, Court of Federal Claims No: 16–0385V
61. Scott Valeen, Washington, District of Columbia, Court of Federal Claims No: 16–0390V
62. Paulette Terhune on behalf of A. T. T., Coral Springs, Florida, Court of Federal Claims No: 16–0393V
63. Jennifer Wolf-Lecy, Dallas, Texas, Court of Federal Claims No: 16–0406V
64. Sonia Bell, Chicago, Illinois, Court of Federal Claims No: 16–0407V
65. Seth Fruge and Christina Majesty on behalf of Reed Fruge, New Orleans, Louisiana, Court of Federal Claims No: 16–0410V
66. Christopher Diane Lewis, Dallas, Texas, Court of Federal Claims No: 16–0411V
67. Debra Bostwick-Kenkel, Beverly Hills, California, Court of Federal Claims No: 16–0412V

[FR Doc. 2016–09172 Filed 4–19–16; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Group on Prevention, Health Promotion, and Integrative and Public Health

AGENCY: Office of the Secretary, Office of the Assistant Secretary for Health, Office of the Surgeon General of the United States Public Health Service, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In accordance with Section 10(a) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App.), notice is hereby given that a meeting is scheduled for the Advisory Group on Prevention, Health Promotion, and Integrative and Public Health (the "Advisory Group"). This meeting will be open to the public. Information about the Advisory Group and the agenda for this meeting can be obtained by accessing the following Web site: *http://www.surgeongeneral.gov/priorities/prevention/advisorygrp/advisory-group-meetings.html.*

DATES: The meeting will be held on May 9, 2016, from 8:45 a.m. to 5:00 p.m. EST—May 10, 2016, from 8:45 a.m. to 1:00 p.m. EST.

ADDRESSES: This meeting will be held at the CDC Washington Office, Room 9000, 395 E Street SW., Washington, DC 20201. Space to accommodate public in-person attendance is very limited. Therefore, arrangements are being made for access to the meeting to be made available by teleconference. Teleconference information will be published closer to the meeting date at: *http://www.surgeongeneral.gov/priorities/prevention/advisorygrp/advisory-group-meetings.html.* Individuals planning to attend the meeting by teleconference must register. The registration procedure is included in this notice under Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Office of the Surgeon General, U.S. Department of Health and Human Services, 200 Independence Ave. SW., Washington, DC 20201; 202–205–9517, *npcsupport@cdc.gov.*

SUPPLEMENTARY INFORMATION: The Advisory Group is a non-discretionary federal advisory committee that was initially established under Executive Order 13544, dated June 10, 2010, to comply with the statutes under Section 4001 of the Patient Protection and Affordable Care Act, Public Law 111–148. The Advisory Group was terminated on September 30, 2012, by Executive Order 13591, dated November 23, 2011. Authority for the Advisory Group to be re-established was given under Executive Order 13631, dated December 7, 2012. Authority for the Advisory Group to continue to operate until September 30, 2017, was given under Executive Order 13708, dated September 30, 2015.

The Advisory Group was established to assist in carrying out the mission of the National Prevention, Health Promotion, and Public Health Council (the Council). The Advisory Group provides recommendations and advice to the Council.

It is authorized for the Advisory Group to consist of no more than 25 non-federal members. The Advisory Group currently has 21 members who were appointed by the President. The membership includes a diverse group of licensed health professionals, including integrative health practitioners who have expertise in (1) worksite health promotion; (2) community services, including community health centers; (3) preventive medicine; (4) health coaching; (5) public health education; (6) geriatrics; and (7) rehabilitation medicine.

A meeting description and relevant materials will be published closer to the meeting date at: *http://www.surgeongeneral.gov/priorities/prevention/advisorygrp/advisory-group-meetings.html.* Members of the public have the opportunity to participate in the meeting and/or provide comments via teleconference to the Advisory Group on May 9–10, 2016. Public comment will be limited to 3 minutes per speaker. Individuals who wish to participate in the meeting and/or provide comments via teleconference must register by 12:00 p.m. EST on April 25, 2016. In order to register, individuals must send their full name and affiliation via email to *npcsupport@cdc.gov.* Individuals who need special assistance and/or accommodations, *i.e.,* sign language interpretation or other reasonable accommodations, should indicate so when they register. Members of the public who wish to have materials distributed to the Advisory Group members at these scheduled meetings should submit those materials when they register.

Dated: March 29, 2016.

Brigette Ulin,

Designated Federal Officer, Advisory Group on Prevention, Health Promotion, and Integrative and Public Health, Office of the Surgeon General.

[FR Doc. 2016–09130 Filed 4–19–16; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of the National Coordinator for Health Information Technology; Delegation of Authorities

Notice is hereby given that I have delegated to the National Coordinator for Health Information Technology (National Coordinator), or his or her successor, the authorities vested in the Secretary of the Department of Health and Human Services, under sections 106(b)(1)(C) and (D) and 106(b)(3)(A) and (B) of the of Medicare Access and CHIP Reauthorization Act (Pub. L. 114–10).

These authorities may be re-delegated.

I hereby ratify and affirm any actions taken by the National Coordinator or by any other officials of the Office of the National Coordinator for Health Information Technology, which, in effect, involved the exercise of these authorities delegated herein prior to the effective date of this delegation. This delegation is effective upon date of signature.

Dated: April 12, 2016.

Sylvia M. Burwell,

Secretary.

[FR Doc. 2016–09128 Filed 4–19–16; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Request for Public Comment: 60 Day Information Collection: Indian Health Service Medical Staff Credentials and Privileges Files

AGENCY: Indian Health Service, HHS.

ACTION: Notice and request for comments. Request for extension of approval.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Indian Health Service (IHS) invites the general public to comment on the information collection titled, "Indian Health Service Medical Staff Credentials and Privileges Files," OMB Control Number 0917–0009, which expires August 31, 2016.

DATES: *Comment Due Date:* June 20, 2016. Your comments regarding this information collection are best assured of having full effect if received within 60 days of the date of this publication.

ADDRESSES: Send your written comments, requests for more information on the collection, or requests to obtain a copy of the data collection instrument and instructions to Cheryl Peterson by one of the following methods:

- *Mail:* Cheryl Peterson, Acting Director, Improving Patient Care Program, Office of Clinical and Preventive Services, Indian Health Service, 5600 Fishers Lane, Mail Stop: 08N34–A, Rockville, MD 20857.
- *Phone:* 301–443–1043.
- *Email: Cheryl.Peterson@ihs.gov.*
- *Fax:* 301–443–9971.

SUPPLEMENTARY INFORMATION: This notice announces our intent to submit the collection to OMB for approval of an extension, and to solicit comments on specific aspects of the information collection. The purpose of this notice is to allow 60 days for public comment to be submitted to IHS. A copy of the supporting statement is available at *www.regulations.gov* (see Docket ID IHS–2016–0004).

Information Collection Title: "Indian Health Service Medical Staff Credentials and Privileges Files, 0917–0009." *Type of Information Collection Request:* Extension of an approved information collection, "Indian Health Service Medical Staff Credentials and Privileges Files, 0917–0009." *Form Numbers:* 0917–0009. *Need and Use of Information Collection:* This collection of information is used to evaluate individual health care providers applying for medical staff privileges at IHS health care facilities. The IHS operates health care facilities that provide health care services to American Indians and Alaska Natives. To provide these services, the IHS employs (directly and under contract) several categories of health care providers including: Physicians (M.D. and D.O.), dentists, psychologists, optometrists, podiatrists, audiologists, physician assistants, certified registered nurse anesthetists, nurse practitioners, and certified nurse midwives. IHS policy specifically requires physicians and dentists to be members of the health care facility medical staff where they practice. Health care providers become medical staff members, depending on the local health care facility's capabilities and medical staff bylaws. There are three types of IHS medical staff applicants: (1) Health care providers applying for direct employment with IHS; (2) contractors who will not seek to become IHS employees; and (3) employed IHS health care providers who seek to transfer between IHS health care facilities.

National health care standards developed by the Centers for Medicare and Medicaid Services, the Joint Commission, and other accrediting organizations require health care facilities to review, evaluate and verify the credentials, training and experience of medical staff applicants prior to granting medical staff privileges. In order to meet these standards, IHS health care facilities require all medical staff applicants to provide information concerning their education, training, licensure, and work experience and any adverse disciplinary actions taken against them. This information is then verified with references supplied by the applicant and may include: former employers, educational institutions, licensure and certification boards, the American Medical Association, the Federation of State Medical Boards, the National Practitioner Data Bank, and the applicants themselves.

In addition to the initial granting of medical staff membership and clinical privileges, Joint Commission standards require that a review of the medical staff be conducted not less than every two years. This review evaluates the current competence of the medical staff and verifies whether they are maintaining the licensure or certification requirements of their specialty.

The medical staff credentials and privileges records are maintained at the health care facility where the health care provider is a medical staff member. The establishment of these records at IHS health care facilities is a Joint Commission requirement. Prior to the establishment of this Joint Commission requirement, the degree to which medical staff applications were maintained at all health care facilities in the United States that are verified for completeness and accuracy varied greatly across the Nation.

The application process has been streamlined and is using information technology to make the application electronically available on the Internet. The application may be found at the IHS.gov Web site address: *https://www.ihs.gov/IHM/index.cfm?module=dsp_ihm_pc_p3c1.*

Affected Public: Individuals and households. *Type of Respondents:* Individuals.

The table below provides: Types of data collection instruments, Estimated number of respondents, Number of annual number of responses, Average burden per response, and Total annual burden hours.

Data collection instrument(s)	Estimated number of respondents	Responses per respondent	Average burden hour per response *	Total annual burden hours
Application to Medical Staff	570	1	1.00 (60 mins)	570
Reference Letter	1710	1	0.33 (20 mins)	570
Reappointment Request	190	1	1.00 (60 mins)	190
Obstetrics–Gynecology Privileges	20	1	1.00 (60 mins)	20
Internal Medicine	325	1	1.00 (60 mins)	325
Surgery Privileges	20	1	1.00 (60 mins)	20
Psychiatry Privileges	13	1	1.00 (60 mins)	13
Anesthesia Privileges	15	1	1.00 (60 mins)	15
Dental Privileges	150	1	0.33 (20 mins)	50
Psychology Privileges	30	1	0.17 (10 mins)	5
Audiology Privileges	7	1	0.08 (5 mins)	1
Podiatry Privileges	7	1	0.08 (5 mins)	1
Radiology Privileges	8	1	0.33 (20 mins)	3
Pathology Privileges	3	1	0.33 (20 mins)	1
Total	3068			1,784

* For ease of understanding, burden hours are provided in actual minutes.

There are no capital costs, operating costs and/or maintenance costs to respondents.

Requests for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate is logical; (e) ways to enhance the quality, utility, and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: April 13, 2016.

Elizabeth A. Fowler,

Deputy Director for Management Operations, Indian Health Service.

[FR Doc. 2016–09170 Filed 4–19–16; 8:45 am]

BILLING CODE 4160–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA Panel: Animal/Biological Resource Facilities.

Date: May 16–17, 2016.

Time: 11:00 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Andrea B. Kelly, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7770, Bethesda, MD 20892, (301) 455–1761, *kellya2@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–15–276: Turkey-U.S. Collaborative Program for Affordable Medical Technologies (R01).

Date: May 17, 2016.

Time: 1:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Careen K. Tang-Toth, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 435–3504, *tothct@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Risk Prevention and Health Behavior AREA Review.

Date: May 20, 2016.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: John H. Newman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3222, MSC 7808, Bethesda, MD 20892, (301) 435–0628, *newmanjh@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 15, 2016.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2016–09195 Filed 4–19–16; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer at (240) 276–1243.

Comments are invited on (a) whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology (IT).

Proposed Project: Youth Programs Evaluation—NEW

The Substance Abuse and Mental Health Services Administration's (SAMHSA), Center for Substance Abuse Treatment (CSAT) is conducting a cross-site external evaluation of three grantee programs that are critical to its youth treatment grants portfolio. The three programs include the 2013 Cooperative Agreements for State Adolescent and Transitional Aged Youth Treatment Enhancement and Dissemination (SYT–ED), the 2015 and 2016 Cooperative Agreements for State Adolescent and Transitional Aged Youth Treatment Enhancement and Dissemination Implementation (SYT–I), and the 2015 Cooperative Agreements for State Adolescent and Transitional Aged Youth Treatment Enhancement and Dissemination Planning (SYT–P).

Preventing and treating substance use and/or mental health disorders are essential to SAMHSA's mission to reduce the impact of behavioral health conditions in America's communities. The specific populations (*i.e.*, adolescents, youth) targeted by the youth programs face a particular set of behavioral health risks and each of the grant programs helps provide targeted services and evidence-based practices. To evaluate the impact and success of SYT program implementation the evaluation includes the following data collection tools:

- *Implementation Interview Guide*
- *Sustainability Interview Guide*
- *Stakeholder Interview Guide*
- *Provider Survey*
- *Focus Group guides*

These data collection tools will provide essential information on each grantee program beyond the performance monitoring data already collected by SAMHSA.

The *Implementation, Sustainability,* and *Stakeholder Interview Guides* are semi-structured interviews. They are designed to collect data on information related to program implementation facilitators and barriers, infrastructure development, factors related to sustainability, and performance that will inform ongoing recommendations to improve program performance and administration. These interview guides were informed by interview guides used successfully in other evaluations including the SAMHSA Access to Recovery Evaluation, ASPE Medicaid Expansion Evaluation, and the SAMHSA Homeless Programs Evaluations. Each interview is estimated to take approximately one hour. SYT grantees and providers will participate in an interview annually while their program is active. SYT program stakeholders will participate once during the course of their respective grant program. Stakeholders include other organizations or agencies that serve or have a stake hold in helping this population, such as other state/territory/tribe organizations (*e.g.*, child welfare organizations, justice agencies), other community-based providers, or community advocacy groups. Grantee programs will be asked to complete the implementation interview annually until the last year of the grant program when they will be asked to complete the sustainability interview. Respondents will include representatives from grantee, provider and stakeholder organizations involved in the SYT programs.

The *Provider Survey* aims to collect data to help identify program activities and services that are being implemented as part of the SYT grant programs and the impact these activities/services may have on client outcomes and treatment systems. Substance abuse service provider organizations (*e.g.*, treatment facilities implementing evidence-based treatment practices) participating in SYT–ED or SYT–I grants will be asked to participate in the survey. The provider survey will collect data on linkages with the grantee and within the youth substance use treatment system for providing services and a safety net to adolescents, transition age youth, and their families. Topics around grantee dissemination and outreach efforts as well as evidence-based practices, program costs and other training activities will also be explored. The Provider survey is estimated to take approximately 1 hour and SYT–ED provider respondents will complete the survey 2 times, once per year, during the cross-site evaluation while SYT–I provider respondents will complete the survey 3 times, once per year.

The *Focus Group guides* aim to collect the clinicians' and other direct care staff members' perspectives in implementing SYT services and the facilitators, barriers and challenges providers encountered. These data will provide valuable contextual data through which to better understand the *Provider Survey* data. Clinicians/staff members are uniquely qualified to answer implementation questions on a client, staff and community level. The *Focus Groups* will allow clinicians/staff members to provide important information around the impact of evidence-based practices in the provider organization and within the community they serve. Clinicians/staff members also will be asked about expectations around evidence-based practices, the effectiveness of implementing evidence-based practices, and the level of engagement from their organization's leadership and the provider community as a whole.

Each provider in the SYT–ED and SYT–I grantee programs will complete the *Focus Group* once and the estimated time per group is 1.5 hours. For each provider, an average of 6 respondents are expected to join the *Focus Group.*

ESTIMATED ANNUALIZED TOTAL CROSS-PROGRAM DATA COLLECTION BURDEN

Grantee cohort	Number of respondents	Responses per respondent	Total number of responses	Hours per response [a]	Total burden hours
SYT–ED grantees	286	1	286	1	286
SYT–I grantees	377	1	377	1	377
SYT–P grantees	104	1	104	1	104
Total	767		767		767

[a] Hours per response is an average annualized estimate.

ESTIMATED ANNUALIZED TOTAL BURDEN BY DATA COLLECTION INSTRUMENT/ACTIVITY

Instrument/activity	Number of respondents	Responses per respondent	Total number of responses	Hours per response [a]	Total burden hours
Sustainability Interviews	98	1	98	1	98
Implementation Interviews	124	1	124	1	124
Stakeholder Interviews	183	1	183	1	183
Provider Survey	74	1	74	1	74
Focus groups	288	1	288	1	288
Total	767		767		767

[a] Hours per response is an average annualized estimate.

Send comments to Summer King, SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 15E57–B, Rockville, Maryland 20857, *OR* email a copy to *summer.king@samhsa.hhs.gov.* Written comments should be received by June 20, 2016.

Summer King,

Statistician.

[FR Doc. 2016–09209 Filed 4–19–16; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4266–DR; Docket ID FEMA–2016–0001]

Texas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–4266–DR), dated March 19, 2016, and related determinations.

DATES: *Effective Date:* March 29, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective March 29, 2016.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–09179 Filed 4–19–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4268–DR; Docket ID FEMA–2016–0001

Mississippi; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi (FEMA–4268–DR), dated March 25, 2016, and related determinations.

DATES: *Effective Date:* April 5, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 25, 2016.

George and Pearl River Counties for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance

(Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–09174 Filed 4–19–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4266–DR; Docket ID FEMA–2016–0001]

Texas; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Texas (FEMA–4266–DR), dated March 19, 2016, and related determinations.

DATES: Effective Date: April 4, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 19, 2016.

Henderson, Limestone, Shelby, and Tyler Counties for Individual Assistance and assistance for emergency protective measures (Categories A and B), including direct federal assistance under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,
Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–09173 Filed 4–19–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2014–0022]

Technical Mapping Advisory Council

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Federal Emergency Management Agency (FEMA) Technical Mapping Advisory Council (TMAC) will meet in person on May 9–10, 2016 in Reston, VA. The meeting will be open to the public.

DATES: The TMAC will meet on Monday, May 9, 2016 from 8:00 a.m.–5:30 p.m. Eastern Daylight Time (EDT), and Tuesday, May 10, 2016 from 8:00 a.m.–5:00 p.m. EDT. Please note that the meeting will close early if the TMAC has completed its business.

ADDRESSES: The meeting will be held in the auditorium of the United States Geological Survey (USGS) headquarters building located at 12201 Sunrise Valley Drive, Reston, VA 20192. Members of the public who wish to attend the meeting must register in advance by sending an email to *FEMA-TMAC@fema.dhs.gov* (Attention: Kathleen Boyer) by 11:00 p.m. EDT on Tuesday, May 3, 2016. Members of the public must check in at the USGS Visitor's entrance security desk; photo identification is required.

For information on facilities or services for individuals with disabilities or to request remote dial in or special assistance at the meeting, contact the person listed in **FOR FURTHER INFORMATION CONTACT** below as soon as possible.

To facilitate public participation, members of the public are invited to provide written comments on the issues to be considered by the TMAC, as listed in the "Supplementary Information" section below. Associated meeting materials will be available at *www.fema.gov/TMAC* for review by Monday, May 2, 2016. Written comments to be considered by the committee at the time of the meeting must be submitted and received by Tuesday, May 3, 2016, identified by Docket ID FEMA–2014–0022, and submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email:* Address the email TO: *FEMA-RULES@fema.dhs.gov* and CC: *FEMA-TMAC@fema.dhs.gov.* Include the docket number in the subject line of the message. Include name and contact detail in the body of the email.
- *Mail:* Regulatory Affairs Division, Office of Chief Counsel, FEMA, 500 C Street SW., Room 8NE, Washington, DC 20472–3100.

Instructions: All submissions received must include the words "Federal Emergency Management Agency" and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. *Docket:* For docket access to read background documents or comments received by the TMAC, go to *http://www.regulations.gov* and search for the Docket ID FEMA–2014–0022.

Public comment periods will be held on Monday, May 9, 2016, from 4:00 p.m. to 4:30 p.m. EDT and Tuesday, May 10, 2016, from 3:00 to 3:30 p.m. EDT. Speakers are requested to limit their comments to no more than three minutes. The public comment period will not exceed 30 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact the individual listed below to register as a speaker by close of business on Thursday, May 5, 2016.

FOR FURTHER INFORMATION CONTACT: Kathleen Boyer, Designated Federal Officer for the TMAC, FEMA, 400 C Street SW., Washington, DC 20024, telephone (202) 646–4023, and email *Kathleen.boyer@fema.dhs.gov.* The TMAC Web site is: *http://www.fema.gov/TMAC.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. Appendix.

As required by the *Biggert-Waters Flood Insurance Reform Act of 2012,* the TMAC makes recommendations to the FEMA Administrator on: (1) How to improve, in a cost-effective manner, the (a) accuracy, general quality, ease of use, and distribution and dissemination of flood insurance rate maps and risk data; and (b) performance metrics and milestones required to effectively and efficiently map flood risk areas in the

United States; (2) mapping standards and guidelines for (a) flood insurance rate maps, and (b) data accuracy, data quality, data currency, and data eligibility; (3) how to maintain, on an ongoing basis, flood insurance rate maps and flood risk identification; (4) procedures for delegating mapping activities to State and local mapping partners; and (5) (a) methods for improving interagency and intergovernmental coordination on flood mapping and flood risk determination, and (b) a funding strategy to leverage and coordinate budgets and expenditures across Federal agencies. Furthermore, the TMAC is required to submit an annual report to the FEMA Administrator that contains: (1) A description of the activities of the Council; (2) an evaluation of the status and performance of flood insurance rate maps and mapping activities to revise and update Flood Insurance Rate Maps; and (3) a summary of recommendations made by the Council to the FEMA Administrator.

Further, in accordance with the *Homeowner Flood Insurance Affordability Act of 2014,* the TMAC must develop a review report related to flood mapping in support of the National Flood Insurance Program (NFIP).

Agenda: On May 9 and 10, 2016, TMAC members will receive briefings from subject matter experts, and will present and deliberate on the draft content and potential recommendations to be incorporated in the 2016 Review Report and the 2016 Annual Report. A brief public comment period will take place each day during the meeting. In addition, the TMAC members will identify and coordinate on the TMAC's next steps for Review Report and Annual Report production. A brief public comment period will take place during the meeting prior to any vote. The full agenda and related briefing materials will be posted for review by May 2, 2016 at *http://www.fema.gov/TMAC.*

Dated: April 12, 2016.

Roy E. Wright,

Deputy Associate Administrator for Insurance and Mitigation, Federal Emergency Management Agency.

[FR Doc. 2016–09169 Filed 4–19–16; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4263–DR; Docket ID FEMA–2016–0001]

Louisiana; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Louisiana (FEMA–4263–DR), dated March 13, 2016, and related determinations.

DATES: Effective Date: April 4, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Louisiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 13, 2016.

Catahoula, East Carroll, Franklin, Lincoln, and St. Helena Parishes for Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B), including direct federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–09177 Filed 4–19–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4260–DR; Docket ID FEMA–2016–0001]

District of Columbia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the District of Columbia (FEMA–4260–DR), dated March 4, 2016, and related determinations.

DATES: *Effective Date:* April 1, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the District of Columbia is hereby amended to include additional categories of work under the Public Assistance program for the area determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 4, 2016.

The District of Columbia for Public Assistance [Categories A and C–G] (already designated for Public Assistance [Category B], including snow assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–09178 Filed 4–19–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4268–DR; Docket ID FEMA–2016–0001]

Mississippi; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi (FEMA–4268–DR), dated March 25, 2016, and related determinations.

DATES: *Effective Date:* March 31, 2016.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 25, 2016.

Clarke, Forrest, Greene, Jones, Marion, Panola, Perry, Quitman, Sunflower, Tunica, and Wayne for Individual Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2016–09180 Filed 4–19–16; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5923–N–02]

Notice of a Federal Advisory Committee Meeting Manufactured Housing Consensus Committee Technical Systems Subcommittee Meeting NFPA 70–2014 Task Group

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Notice of a Federal Advisory Committee Meeting: Manufactured Housing Consensus Committee (MHCC).

SUMMARY: This notice sets forth the schedule and proposed agenda for a teleconference meeting of the MHCC, Technical Systems Subcommittee, NFPA 70–2014 Task Group. The meeting is open to the public. The agenda provides an opportunity for citizens to comment on the business before the MHCC.

DATES: The teleconference meeting will be held on May 25, 2016, from 1:00 p.m. to 4:00 p.m. Eastern Daylight Time (EDT). The teleconference numbers are US toll free: 866–622–8461 and Participant Code 4325434.

FOR FURTHER INFORMATION CONTACT: Pamela Beck Danner, Administrator, Department of Housing and Urban Development, Office of Manufactured Housing Programs, 451 7th Street SW., Room 9168, Washington, DC 20410, telephone (202) 708–6423 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Notice of this meeting is provided in accordance with the Federal Advisory Committee Act, 5. U.S.C. App. 10(a)(2) through implementing regulations at 41 CFR 102–3.150. The MHCC was established by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5403(a)(3), as amended by the Manufactured Housing Improvement Act of 2000, (Pub. L. 106–569). According to 42 U.S.C. 5403, as amended, the purposes of the MHCC are to:

- Provide periodic recommendations to the Secretary to adopt, revise, and interpret the Federal manufactured housing construction and safety standards in accordance with this subsection;
- Provide periodic recommendations to the Secretary to adopt, revise, and interpret the procedural and enforcement regulations, including regulation specifying the permissible scope and conduct of monitoring in accordance with subsection (b);
- Be organized and carry out its business in a manner that guarantees a fair opportunity for the expression and consideration of various positions and for public participation.

The MHCC is deemed an advisory committee not composed of Federal employees.

Public Comment: Citizens wishing to make comments on the business of the MHCC are encouraged to register before May 20, 2016, by contacting Home Innovation Research Labs, *Attention:* Kevin Kauffman, 400 Prince Georges Blvd., Upper Marlboro, MD 20774, or email to *mhcc@homeinnovation.com or call 1–888–602–4663.* Written comments are encouraged. The MHCC strives to accommodate citizen comments to the extent possible within the time constraints of the meeting agenda. Advance registration is strongly encouraged. The MHCC will also provide an opportunity for public comment on specific matters before the Technical Systems Subcommittee, NFPA 70–2014 Task Group.

Tentative Agenda

Wednesday, May 25, 2016, From 1:00 p.m. to 4:00 p.m. Eastern Daylight Time (EDT)

I. Call to Order and Roll Call

II. Opening Remarks—NFPA 70–2014—Task Group, Chair and DFO

III. Approve minutes from January 19, 2016, Technical Systems Subcommittee, NFPA 70—2014, Task Group

IV. New Business:

- Consider replacing Subpart I of 24 CFR 3280 with incorporation by reference of applicable provisions of NFPA 70, National Electrical Code -2014, and
- Review submitted proposed amendments to NFPA 70, National Electrical Code

V. Open Discussion

VI. Public Comments

VII. Adjourn 4:00 p.m.

Dated: April 14, 2016.

Pamela Beck Danner,

Administrator, Office of Manufactured Housing Programs.

[FR Doc. 2016–09051 Filed 4–19–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5915–N–08]

60-Day Notice of Proposed Information Collection: Enterprise Income Verification (EIV) Systems—Access Authorization Form and Rules of Behavior and User Agreement

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, PIH, HUD.

ACTION: Notice of proposed information collection.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* June 20, 2016.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Arlette Mussington, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street SW., (L'Enfant Plaza, Room 2206), Washington, DC 20410; telephone 202–402–4109, (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Mussington.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: EIV System User Access Authorization Form and Rules of Behavior and User Agreement.

OMB Approval Number: 2577–0267.

Type of Request: Revision of currently approved collection.

Form Number: 52676 and 52676I.

Description of the need for the information and proposed use: In accordance with statutory requirements at 5 U.S.C. 552a, as amended (most commonly known as the Federal Privacy Act of 1974), the Department is required to account for all disclosures of information contained in a system of records. Specifically, the Department is required to keep an accurate accounting of the name and address of the person or agency to which the disclosure is made. The Enterprise Income Verification (EIV) System (HUD/PIH–5) is classified as a System of Records, as initially published on July 20, 2005, in the **Federal Register** at page 41780 (70 FR 41780) and amended and published on August 8, 2006, in the **Federal Register** at page 45066 (71 FR 45066).

As a condition of granting access to the EIV system, each prospective user of the system must (1) request access to the system; (2) agree to comply with HUD's established rules of behavior; and (3) review and signify their understanding of their responsibilities of protecting data protected under the Federal Privacy Act (5 U.S.C. 522a, as amended). As such, the collection of information about the user and the type of system access required by the prospective user is required by HUD to: (1) Identify the user; (2) determine if the prospective user in fact requires access to the EIV system and in what capacity; (3) provide the prospective user with information related to the Rules of Behavior for system usage and the user's responsibilities to safeguard data accessed in the system once access is granted; and (4) obtain the signature of the prospective user to certify the user's understanding of the Rules of Behavior and responsibilities associated with his/her use of the EIV system.

HUD collects the following information from each prospective user: Public Housing Agency (PHA) code, organization name, organization address, prospective user's full name, HUD-assigned user ID, position title, office telephone number, facsimile number, type of work which involves the use of the EIV system, type of system action requested, requested access roles to be assigned to prospective user, public housing development numbers to be assigned to prospective PHA user, and prospective user's signature and date of request. The information is collected electronically and manually (for those who are unable to transmit electronically) via a PDF-fillable or Word-fillable document, which can be emailed, faxed or mailed to HUD. If this information is not collected, the Department will not be in compliance with the Federal Privacy Act and be subject to civil penalties.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
HUD–52676 and HUD52676.	12,777	on occasion	13,209	Initial 1/hr. Periodic 0.25/hr.	Initial 9896 Periodic 828.	$21.03	$225,525
Total	12,777	on occasion	13,209	....	10,724	21.03	225,525

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: April 12, 2016.

Merrie Nichols-Dixon,

Deputy Director, Office of Policy, Programs and Legislative Initiatives.

[FR Doc. 2016–09052 Filed 4–19–16; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2015–N247; FXES11130000–156–FF08E00000]

Endangered and Threatened Wildlife and Plants; Recovery Plan for Vine Hill Clarkia

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the Recovery Plan for Vine Hill Clarkia (*Clarkia imbricata*). The recovery plan includes recovery objectives and criteria, and specific actions necessary to achieve downlisting and delisting from the Federal Lists of Endangered and Threatened Wildlife and Plants.

ADDRESSES: You may obtain a copy of the recovery plan from our Web site at *http://www.fws.gov/endangered/species/recovery-plans.html.* Alternatively, you may contact the Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, CA 95825 (telephone 916–414–6700).

FOR FURTHER INFORMATION CONTACT: Jennifer Norris, Field Supervisor, at the above street address or telephone number (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of our endangered species program and the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*). Recovery means improvement of the status of listed species to the point at which listing is no longer appropriate under the criteria specified in section 4(a)(1) of the Act. The Act requires the development of recovery plans for listed species, unless such a plan would not promote the conservation of a particular species.

We listed Vine Hill clarkia throughout its entire range as endangered on October 22, 1997 (62 FR 55791). The species was also listed as endangered by the State of California in 1978. It is a narrow endemic, historically known from three locations in central Sonoma County, California, all three of which may be extirpated. Currently, the species is only known to exist as a single introduced population on the 0.6-hectare (1.5-acre) Vine Hill Preserve, owned and managed by the California Native Plant Society. Between 2007 and 2012, the population fluctuated from approximately 500 to 8,781 plants.

All known populations of Vine Hill clarkia are located between 60 to 75 meters (197 to 246 feet) elevation, on what has been mapped as Goldridge acidic sandy loams, in an area sometimes referred to as the Sonoma Barrens. The ability of Vine Hill clarkia to persist naturally outside of Sonoma Barrens conditions is unknown. The Sonoma Barrens are an area within Sonoma County located halfway between maritime and inland climates, in a pronounced fog gap that makes it subject to peculiar climatic fluctuations.

At this time, the primary threats to Vine Hill clarkia are competition for light and space with native and non-native species and risk of extinction from stochastic environmental events associated with small populations. Because of the extreme range restriction of this already-narrow endemic, and its small population size, the plant is highly vulnerable to extinction from random events, including wildfire, herbivory, disease and pest outbreaks, and human disturbance.

Two species of concern are also addressed in this recovery plan, Vine Hill manzanita (*Arctostaphylos densiflora*) and Vine Hill ceanothus (*Ceanothus foliosus* var. *vineatus*), which historically coexisted with Vine Hill clarkia. Vine Hill manzanita and Vine Hill ceanothus are included in this recovery plan because a community-based recovery strategy provides for conservation of species with similar habitat requirements to those of Vine Hill clarkia, and because recovery actions implemented for Vine Hill clarkia that do not consider these other rare species may negatively affect the community. These two species are, respectively, State listed as endangered and listed Rank 1B by the California Native Plant Society.

Recovery Plan Goals

The purpose of a recovery plan is to provide a framework for the recovery of species so that protection under the Act is no longer necessary. A recovery plan includes scientific information about the species and provides criteria that enable us to gauge whether downlisting or delisting the species is warranted. Furthermore, recovery plans help guide our recovery efforts by describing actions we consider necessary for each species' conservation and by estimating time and costs for implementing needed recovery measures.

The goal of this recovery plan is to improve the status of Vine Hill clarkia so that it can be delisted. The interim goal is to recover the species to the point that it can be downlisted from endangered to threatened status. The recovery objectives of the plan are:

- Restore Sonoma Barrens habitat and establish Vine Hill clarkia.
- Manage native and nonnative vegetation that competes with Vine Hill clarkia.
- Ensure locations with Vine Hill clarkia are secure from incompatible uses.

The recovery plan contains recovery criteria based on protecting, maintaining, and increasing populations, as well as increasing habitat quality and quantity. As Vine Hill clarkia meets recovery criteria, we will review its status and consider it for downlisting or removal from the Federal Lists of Endangered and Threatened Wildlife and Plants.

Community conservation efforts recommended for Vine Hill manzanita and Vine Hill ceanothus include establishing these species, either in concert with each other and Vine Hill clarkia, or separately.

Authority

We developed this recovery plan under the authority of section 4(f) of the Act, 16 U.S.C. 1533(f). We publish this notice under section 4(f) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Alexandra Pitts,

Acting Regional Director, Pacific Southwest Region.

[FR Doc. 2016–09104 Filed 4–19–16; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMF00000 L13100000.PP0000 16X]

Notice of Public Meeting, Farmington District Resource Advisory Council Meeting, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the Bureau of Land Management's (BLM) Farmington District Resource Advisory Council (RAC) will meet as indicated below.

DATES: The RAC will meet on May 9 and 10, 2016, at the BLM Farmington District Office, 6251 College Blvd., Suite A, Farmington, New Mexico. On May 9, 2016, the RAC will meet from 9 a.m. to 4 p.m. at the District Office. On May 10, 2016, from 8 a.m. to 5 p.m. the BLM and RAC will tour the Pierre's Site located south of Farmington, NM and then visit BLM reclaimed sites. Both the meeting and field tour is open to the public. In addition, the public may send written comments to the RAC at the BLM Farmington District Office, 6251 College Blvd., Suite A, Farmington, NM 87401.

FOR FURTHER INFORMATION CONTACT: Tamara Faust, BLM Farmington District Office, 6251 College Blvd., Suite A, Farmington, NM 87401, 505–564–7762. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8229 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 10-member Farmington District RAC advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in the BLM's Farmington District. Planned agenda items include updates on National, current, or proposed projects in the Farmington District including Onshore Orders 3, 4, 5 and 9, a fee proposal and business plan for BLM -Taos recreation sites, a fee proposal for the Carson National Forest, a cheat grass and weed control pilot project, a Bisti Pentaceratops extraction update, and a field trip.

A half-hour comment period, during which the public may address the RAC, has been scheduled for 3 p.m. on Monday, May 9, 2016. Depending on the number of individuals wishing to comment and time available, the time for individual oral comments may be limited.

Byron Loosle,

Acting Deputy State Director, Lands and Resources.

[FR Doc. 2016–09110 Filed 4–19–16; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–20710; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Puʻuhonua o Hōnaunau National Historical Park, Hōnaunau, HI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of the Interior, National Park Service, Puʻuhonua o Hōnaunau National Historical Park has completed an inventory of human remains, in consultation with the appropriate Indian tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and present-day Indian tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request to Puʻuhonua o Hōnaunau National Historical Park. If no additional requestors come forward, transfer of control of the human remains to the lineal descendants, Indian tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Puʻuhonua o Hōnaunau National Historical Park at the address in this notice by May 20, 2016.

ADDRESSES: Tammy Duchesne, Superintendent, Puʻuhonua o Hōnaunau National Historical Park, P.O. Box 129, Hōnaunau, HI 97626, telephone (808) 328–2326, email *tammy_duchesne@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains under the control of the U.S. Department of the Interior, National Park Service, Puʻuhonua o Hōnaunau National Historical Park, Hōnaunau, HI. The human remains were removed from two sites in Hawaiʻi County, HI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d) (3). The determinations in this notice are the sole responsibility of the Superintendent, Puʻuhonua o Honaunau National Historical Park.

Consultation

A detailed assessment of the human remains was made by Puʻuhonua o Hōnaunau National Historical Park professional staff in consultation with representatives of the Office of Hawaiian Affairs and representatives of the ʻohana of Ah Tou, Casuga (Kalohi), Freitas (Moanauli), Galieto (Kelepolo), Kauhaihao (Kelekolio), Keakealani (Maunu), Kekuewa (Moanauli), Lindo, Medeiros (Kalalahua), and Ramos (Kahikina). The Hawaii Island Burial Council was invited to consult but did not participate.

History and Description of the Remains

In 1968, human remains representing, at minimum, two individuals were removed from the Thompson House Lot Site in Hawaiʻi County, HI. No known individuals were identified. No associated funerary objects are present.

In 1968, human remains representing, at minimum, three individuals were removed from the Beach Site in Hawaiʻi County, HI. No known individuals were identified. No associated funerary objects are present.

The Thompson House site is composed of traditional Hawaiian habitation features, including no less than four structures likely consisting of a *mua* (men's house), *hale noa* (family house), *hale kahumu* (cooking shelter), and a *hale ʻaina* (women's eating house). It has been suggested that the site may have been one of the homes of Kīwalaʻō, Kamehameha's adversary, who often resided in Hōnaunau.

The remains from the Beach Site were removed from a buried cultural layer that contained no European material, indicating that they are Native Hawaiian.

Determinations Made by Puʻuhonua o Hōnaunau National Historical Park

Officials of Puʻuhonua o Hōnaunau National Historical Park have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of five individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the ʻohana of Ah Tou, Casuga (Kalohi), Freitas (Moanauli), Galieto (Kelepolo), Kauhaihao (Kelekolio), Keakealani (Maunu),

Kekuewa (Moanauli), Lindo, Medeiros (Kalalahua), Ramos (Kahikina) and the Office of Hawaiian Affairs.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains should submit a written request with information in support of the request to Tammy Duchesne, Superintendent, Puʻuhonua o Hōnaunau National Historical Park, P.O. Box 129, Hōnaunau, HI 96726, telephone (808) 328–2326, email *tammy_duchesne@nps.gov,* by May 20, 2016. After that date, if no additional requestors have come forward, transfer of control of the human remains to the ʻohana of Ah Tou, Casuga (Kalohi), Freitas (Moanauli), Galieto (Kelepolo), Kauhaihao (Kelekolio), Keakealani (Maunu), Kekuewa (Moanauli), Lindo, Medeiros (Kalalahua), Ramos (Kahikina), and the Office of Hawaiian Affairs may proceed.

Puʻuohonua o Hōnaunau National Historical Park is responsible for notifying the Office of Hawaiian Affairs; the Hawaii Island Burial Council; and the ʻohana of Ah Tou, Casuga (Kalohi), Freitas (Moanauli), Galieto (Kelepolo), Kauhaihao (Kelekolio), Keakealani (Maunu), Kekuewa (Moanauli), Lindo, Medeiros (Kalalahua), and Ramos (Kahikina) that this notice has been published.

Dated: March 24, 2016.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2016–09129 Filed 4–19–16; 8:45 am]

BILLING CODE 4312–50–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1082–1083 (Second Review)]

Chlorinated Isocyanurates From China and Spain; Scheduling of Full Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to the Tariff Act of 1930 ("the Act") to determine whether revocation of the antidumping duty orders on chlorinated isocyanurates from China and Spain would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days.

DATES: *Effective Date:* April 13, 2016.

FOR FURTHER INFORMATION CONTACT: Christopher J. Cassise (202–708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On December 7, 2015, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews should proceed[1] (80 FR 79358, December 21, 2015); accordingly, full reviews are being scheduled pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

Participation in the reviews and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the reviews will be placed in the nonpublic record on August 18, 2016, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on Thursday, September 13, 2016, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 6, 2016. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should participate in a prehearing conference to be held on September 9, 2016, at the U.S. International Trade Commission Building, if deemed necessary. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is August 29, 2016. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is September 22, 2016. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before September 22, 2016. On October 17, 2016, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before October 19, 2016, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov*, elaborates upon the Commission's rules with respect to electronic filing.

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[1] Vice Chairman Pinkert, Commissioner Williamson, and Commissioner Schmidtlein voted to conduct expedited reviews of the orders because they did not find any circumstances that would warrant conducting full reviews.

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

The Commission has determined that these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: April 14, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–09080 Filed 4–19–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Public Availability of the U.S. International Trade Commission's FY 2015 Service Contract Inventory

AGENCY: U.S. International Trade Commission.

ACTION: Notice of public availability of FY 2015 Service Contract Inventory.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (Pub. L. 111–117), the U.S. International Trade Commission is publishing this notice to advise the public of the availability of the FY 2015 Service Contract Inventory. The USITC has posted its inventory and a summary of the inventory on USITC's Web site at the following link: *http://www.usitc.gov/procurement.htm*.

This inventory provides information on service contract actions over $25,000 that were awarded in FY 2015. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010, and December 19, 2011, by the Office of Management and Budget's Office of Federal Procurement Policy.

Questions regarding the service contract inventory should be directed to Debra Bridge, Office of Procurement, U.S. International Trade Commission, at 202–205–2004 or *debra.bridge@usitc.gov*.

By order of the Commission.

Issued: April 14, 2016.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2016–09072 Filed 4–19–16; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–16–014]

Government in the Sunshine Act Meeting Notice

TIME AND DATE: April 26, 2016 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: None.
2. Minutes.
3. Ratification List.
4. Vote in Inv. No. 731–TA–282 (Fourth Review) (Petroleum Wax Candles from China). The Commission is currently scheduled to complete and file its determination and views of the Commission on May 10, 2016.
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: April 15, 2016.

By order of the Commission.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2016–09232 Filed 4–18–16; 11:15 am]

BILLING CODE 7020–02–P

LIBRARY OF CONGRESS

U.S. Copyright Office

[Docket No. 2015–7]

Section 512 Study: Notice of Location Change for New York Public Roundtables

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of location change for New York public roundtables.

SUMMARY: The United States Copyright Office has changed the location of the May 2 and 3, 2016 public roundtables on the section 512 study. The public roundtables in New York and California were originally announced in the Office's Notice of Inquiry on March 18, 2016. *See* 81 FR 14896. The May 2 and 3, 2016 public roundtables in New York will now be held in Room 506 of the Thurgood Marshall United States Courthouse, 40 Centre Street, New York, New York, 10007.

DATES AND ADDRESSES: The New York roundtable will take place on May 2 and 3, 2016, from 9:00 a.m. to 5:00 p.m. on both days, and will be held in Room 506 of the Thurgood Marshall United States Courthouse, 40 Centre Street, New York, New York, 10007.

FOR FURTHER INFORMATION CONTACT: Jacqueline C. Charlesworth, General Counsel and Associate Register of Copyrights, *jcharlesworth@loc.gov;* or Karyn Temple Claggett, Director of the Office of Policy and International Affairs and Associate Register of Copyrights, *kacl@loc.gov*. Both can be reached by telephone at 202–707–8350.

SUPPLEMENTARY INFORMATION: On December 31, 2015, the Copyright Office issued a Notice of Inquiry seeking public comment on thirty topics concerning the efficiency and effectiveness of section 512 of Title 17. *See* 80 FR 81862. The Office then issued an NOI on March 18, 2016 announcing two two-day public roundtables on section 512 to be held in New York, New York on May 2 and 3, 2016, and Stanford, California on May 12 and 13, 2016. *See* 81 FR 14896. Interested members of the public were directed to submit participation requests through forms posted on the Office's Web site no later than April 11, 2016.

Due to the significant level of interest in the proceeding, the Office has decided to move the location of the New York roundtable to Room 506 of the Thurgood Marshall United States Courthouse, 40 Centre Street, New York, New York 10007.

Please note that the roundtable hearing rooms, in New York and California, will have a limited number of seats for participants and observers. For individuals who wish to observe a roundtable, the Office will provide public seating on a first-come, first-served basis on the days of the roundtables.

Individuals selected for participation in one or more of the roundtable sessions will be notified directly by the Office. For additional information about the specific topics to be covered at the roundtables, please see *http://copyright.gov/policy/section512/public-roundtable/participate-request.html.*

Dated: April 15, 2016.

Maria A. Pallante,

Register of Copyrights, U.S. Copyright Office.

[FR Doc. 2016–09175 Filed 4–19–16; 8:45 am]

BILLING CODE 1410–30–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Social, Behavioral and Economic Sciences; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Social, Behavioral and Economic Sciences (#1171).

Date/Time: May 23, 2016; 9:00 a.m. to 5:00 p.m. May 24, 2016; 8:30 a.m. to 12:30 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Stafford I Room 1235, Arlington, VA 22230.

Type Of Meeting: Open.

Contact Person: Dr. Deborah Olster, Office of the Assistant Director, Directorate for Social, Behavioral and Economic Sciences, National Science Foundation, 4201 Wilson Boulevard, Room 905, Arlington, Virginia 22230, 703–292–8700.

Summary Of Minutes: May be obtained from contact person listed above.

Purpose Of Meeting: To provide advice and recommendations to the National Science Foundation on major goals and policies pertaining to Social, Behavioral and Economic Sciences Directorate (SBE) programs and activities.

Agenda

Monday, May 23, 2016

SBE Directorate and Division Updates
Grand Challenges in the SBE Sciences
Graduate Education in the SBE Sciences
Science of Science Communications

Tuesday, May 24, 2016

Public Access to SBE Data
Cyberinfrastructure: Collaborations between SBE and the Directorate for Computer & Information Science & Engineering
NSF Broader Impacts Strategic Review
Meeting with NSF Leadership
Future Meetings, Assignments and Concluding Remarks

Dated: April 14, 2016.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2016–09049 Filed 4–19–16; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–275 and 50–323; NRC–2016–0080]

Diablo Canyon Power Plant, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for action; receipt.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is giving notice that Friends of the Earth (FOE or petitioner) filed a Petition to Intervene and Request for Hearing concerning Diablo Canyon Power Plant (DCPP) on August 26, 2014, asserting, in part, its concerns about DCPP's operational safety and ability to safely shut down in the event of a nearby earthquake. The Commission referred those concerns to the NRC's Executive Director for Operations (EDO) for consideration. The petitioner's requests are included in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: Please refer to Docket ID NRC–2016–0080 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2016–0080. Address questions about NRC dockets to Carol Gallagher; telephone: 301–415–3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select "*ADAMS Public Documents*" and then select "*Begin Web-based ADAMS Search.*" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Lisa M. Regner, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; telephone: 301–415–1906, email: *Lisa.Regner@nrc.gov.*

SUPPLEMENTARY INFORMATION:

On August 26, 2014, FOE filed a Petition to Intervene and Request for Hearing (Petition) concerning DCPP (ADAMS Package Accession No. ML15226A316). Within this Petition, FOE asserted concerns about DCPP's operational safety and ability to safely shut down. The Commission referred those concerns to the NRC's EDO[1] for consideration under the regulations in section 2.206 of title 10 of the *Code of Federal Regulations* (10 CFR), "Requests for Action Under this Subpart." The EDO then referred these concerns to the NRC's Office of Nuclear Reactor Regulation for consideration under 10 CFR 2.206.

On two occasions, the NRC offered the petitioner opportunities to address the Petition Review Board (PRB), which was established to review the concerns referred to the EDO from the Commission, as discussed above. In response, on September 30, 2015, and February 8, 2016, FOE's attorney provided written submissions on behalf of FOE to the PRB in lieu of FOE addressing the PRB in person or via telephone (ADAMS Package Accession No. ML15226A316).

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[1] Memorandum and Order CLI–15–14, dated May 21, 2015 (ADAMS Accession No. ML15141A084).

Based on the information described above, the NRC has decided to accept the petitioner's concerns referred to the EDO by the Commission for consideration under the 10 CFR 2.206 process because these concerns meet the criteria provided in Management Directive 8.11, "Review Process for 10 CFR 2.206 Petitions."

Dated at Rockville, Maryland, this 12th day of April 2016.

For the Nuclear Regulatory Commission.

William M. Dean,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 2016–09145 Filed 4–19–16; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0134, Application To Make Deposit or Redeposit (CSRS), SF 2803, Application To Pay Military Deposit for Military Service Performed After December 31, 1956 (CSRS), SF 2803A; and Application To Make Service Credit Payment for Civilian Service (FERS), SF 3108, Application To Pay Military Deposit for Military Service Performed After December 31, 1956 (FERS), SF 3108A

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on an extension, without change, of a currently approved information collection request (ICR) 3206–0134, Application To Make Deposit or Redeposit (CSRS) [SF 2803], Application To Pay Military Deposit for Military Service Performed After December 31, 1956 (CSRS), [SF 2803A]; and Application To Make Service Credit Payment for Civilian Service (FERS) [SF 3108], Application To Pay Military Deposit for Military Service Performed After December 31, 1956 (FERS), [SF 3108A]. As required by the Paperwork Reduction Act of 1995 (Pub. Law 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. This information collection was previously published in the **Federal Register** on February 22, 2016 (Volume 81, No. 34, Page 8761) allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until May 20, 2016. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: SF 2803 (CSRS), SF 2803A (CSRS), SF 3108 (FERS) and SF 3108A (FERS) are applications to make payment used by persons who are eligible to pay for Federal service which was not subject to retirement deductions and/or for Federal service which was not subject to retirement deductions which were subsequently refunded to the applicant.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Application to Make Deposit or Redeposit (CSRS), and Application to Make Service Credit Payment for Civilian Service (FERS).

OMB Number: 3206–0134.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 150.

Estimated Time per Respondent: 30 minutes for completing.

Total Burden Hours: 75.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2016–09136 Filed 4–19–16; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0226, It's Time To Sign Up for Direct Deposit or Direct Express, RI 38–128

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on an extension without change of a currently approved information collection request (ICR) 3206–0226, It's Time To Sign Up for Direct Deposit or Direct Express. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on February 22, 2016, at Volume 81 Issue 34 Page 8760 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until May 20, 2016. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: RI 38–128 is primarily used by OPM to give recent retirees the opportunity to waive Direct Deposit of their annuity payments. The form is sent only if the separating agency did not give the retiring employee this election opportunity. This form may also be used to enroll in Direct Deposit, which was its primary use before Public Law 104–134 was passed. This law requires OPM to make all recurring benefits payments electronically to beneficiaries who live where Direct Deposit is available. Beneficiaries who do not enroll in the Direct Deposit Program will be enrolled in Direct Express.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: It's Time To Sign Up for Direct Deposit or Direct Express.

OMB Number: 3206–0226.

Frequency: On occasion.

Affected Public: Individuals or households.

Number of Respondents: 20,000.

Estimated Time per Respondent: 30 minutes.

Total Burden Hours: 10,000 hours.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2016–09138 Filed 4–19–16; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Cancellation of Upcoming Meeting

AGENCY: U. S. Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Federal Prevailing Rate Advisory Committee is issuing this notice to cancel the April 21, 2016, public meeting scheduled to be held in Room 5A06A, U.S. Office of Personnel Management Building, 1900 E Street NW., Washington, DC. The original **Federal Register** notice announcing this meeting was published Wednesday, November 25, 2015, at 80 FR 73839.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, 202–606–2838, or email *pay-leave-policy@opm.gov.*

U.S. Office of Personnel Management.

Sheldon Friedman,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 2016–09134 Filed 4–19–16; 8:45 am]

BILLING CODE 6325–49–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: 3206–0143, Request to Disability Annuitant for Information on Physical Condition and Employment, RI 30–1

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revised information collection request (ICR) 3206–0143, Request to Disability Annuitant for Information on Physical Condition and Employment, RI 30–1. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection.

DATES: Comments are encouraged and will be accepted until June 20, 2016. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to U.S. Office of Personnel Management, Retirement Services, 1900 E Street NW., Washington, DC 20415–3500, Attention: Alberta Butler, Room 2347–E or sent via electronic mail to *Alberta.Butler@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting, the Retirement Services Publications Team, U.S. Office of Personnel Management, 1900 E Street NW., Room 3316-L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent by email to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of OPM, including whether the information will have practical utility;

2. Evaluate the accuracy of OPM's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

RI 30–1 is used by persons who are not yet age 60 and who are receiving a disability annuity and are subject to inquiry regarding their medical condition as OPM deems reasonably necessary. RI 30–1 collects information as to whether the disabling condition has changed.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Request to Disability Annuitant for Information on Physical Condition and Employment.

OMB Number: 3206–0143.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 8,000.

Estimated Time per Respondent: 60 minutes.

Total Burden Hours: 8,000.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2016–09133 Filed 4–19–16; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Notification of Application for Refund of Retirement Deductions, SF 3106 and SF 3106A, 3206–0170

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on an extension without change of a currently approved information collection (ICR) 3206–0170, Notification of Application for Refund of Retirement Deductions. As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection.

DATES: Comments are encouraged and will be accepted until June 20, 2016. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to Retirement Services, U.S. Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, Attention: Alberta Butler, Room 2347–E, or sent via electronic mail to *Alberta.Butler@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation, may be obtained by contacting the Retirement Services Publications Team, Office of Personnel Management, 1900 E Street NW., Room 3316–L, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

SF 3106, Application for Refund of Retirement Deductions under FERS is used by former Federal employees under FERS, to apply for a refund of retirement deductions withheld during Federal employment, plus any interest provided by law. SF 3106A, Current/Former Spouse(s) Notification of Application for Refund of Retirement Deductions Under FERS, is used by refund applicants to notify their current/former spouse(s) that they are applying for a refund of retirement deductions, which is required by law.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Application for Refund of Retirement Deductions, SF 3106.

OMB Number: 3206–0170.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: SF 3106 = 8,000; SF 3106A = 6,400.

Estimated Time per Respondent: SF 3106 = 30 minutes; SF 3106A = 5 minutes.

Total Burden Hours: 4533.

U.S. Office of Personnel Management.

Beth F. Cobert,

Acting Director.

[FR Doc. 2016–09135 Filed 4–19–16; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77623; File No. SR–NASDAQ–2016–028]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change Relating to the Listing and Trading of the Shares of the iSectors Post-MPT Growth ETF of ETFis Series Trust I

April 14, 2016.

On February 23, 2016, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the iSectors Post-MPT Growth ETF, a series of ETFis Series Trust I, under Nasdaq Rule 5735. The proposed rule change was published for comment in the **Federal Register** on March 11, 2016.[3] The Commission received no comments on the proposed rule change.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is April 25, 2016. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider this proposed rule change. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[5] designates June 9, 2016, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NASDAQ–2016–028).

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77301 (Mar. 7, 2016), 81 FR 978.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–09064 Filed 4–19–16; 8:45 am]

BILLING CODE 8011–01–P

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[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77619; File No. SR–NASDAQ–2016–021]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Relating to the Listing and Trading of the Shares of the First Trust Alternative Absolute Return Strategy ETF of First Trust Exchange-Traded Fund VII

April 14, 2016.

I. Introduction

On February 16, 2016, The NASDAQ Stock Market LLC ("Exchange" or "Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or Exchange Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade the shares ("Shares") of the First Trust Alternative Absolute Return Strategy ETF ("Fund") of the First Trust Exchange-Traded Fund VII ("Trust"). The proposed rule change was published for comment in the **Federal Register** on March 2, 2016.[3] On April 12, 2016, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment No. 1 thereto.

II. Exchange's Description of the Proposal

The Exchange proposes to list and trade the Shares of the Fund under Nasdaq Rule 5735, which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by the Trust, which was established as a Massachusetts business trust on November 6, 2012.[5] The Trust is registered with the Commission as an investment company and has filed a registration statement on Form N–1A ("Registration Statement") with the Commission.[6] The Fund will be a series of the Trust.

First Trust Advisors L.P. will be the investment adviser ("Adviser") to the Fund. First Trust Portfolios L.P. ("Distributor") will be the principal underwriter and distributor of the Fund's Shares. Brown Brothers Harriman & Co. will act as the administrator, accounting agent, custodian, and transfer agent to the Fund. According to the Exchange, the Adviser is not a broker-dealer, but it is affiliated with the Distributor, which is a broker-dealer. The Exchange represents that the Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition of, or changes to, the portfolio.[7] In addition, the Exchange states that personnel who make decisions on the Fund's portfolio composition will be subject to procedures designed to prevent the use and dissemination of material, non-public information regarding the Fund's portfolio.

The Exchange has made the following representations and statements describing the Fund and the Fund's investment strategies, including the Fund's portfolio holdings and investment restrictions.[8]

A. Exchange's Description of the Fund

The Fund will be an actively-managed exchange-traded fund ("ETF") that will seek to achieve long-term total return by using a long/short commodities strategy. Under normal market conditions,[9] the Fund will invest in a combination of securities, exchange-traded commodity futures contracts, and other instruments, either directly or through a wholly-owned subsidiary controlled by the Fund and organized under the laws of the Cayman Islands ("First Trust Subsidiary"), as described herein.

The Fund will invest in: (1) The First Trust Subsidiary; (2) U.S. government and agency securities;[10] (3) short-term repurchase agreements;[11] (4) money market instruments;[12] and (5) cash. The First Trust Subsidiary may also invest in the instruments described in the foregoing clauses (2) through (5) (collectively, "Other Investments"). Other Investments (except for cash and money market mutual funds) each will have a maturity of five years or less. The Fund (and, as applicable, the First Trust Subsidiary) will use the Other Investments for investment purposes, to provide liquidity, or to collateralize the First Trust Subsidiary's investments in exchange-traded commodity futures contracts ("Commodities").

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 77233 (Feb. 25, 2016), 81 FR 10925 ("Notice").

[4] In Amendment No. 1 to the proposed rule change, the Exchange clarified that: (a) All statements and representations made in the proposal regarding the description of the portfolio, limitations on portfolio holdings or reference assets, or the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange; (b) the issuer will advise the Exchange of any failure by the Fund to comply with the continued listing requirements; (c) pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements; and (d) if the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series rules. In addition, the Exchange clarified the description of the Fund's investments in U.S. government and agency securities by deleting "short-term high-quality." Because Amendment No. 1 to the proposed rule change does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 1 is not subject to notice and comment (Amendment No. 1 is available at: *http://www.sec.gov/comments/sr-nasdaq-2016-021/nasdaq2016021-1.pdf*).

[5] According to the Exchange, the Trust has obtained an order from the Commission granting certain exemptive relief under the Investment Company Act of 1940 ("1940 Act"). *See* Investment Company Act Release No. 30029 (April 10, 2012) (File No. 812–13795) ("Exemptive Order").

[6] *See* Post-Effective Amendment No. 6 to Registration Statement on Form N–1A for the Trust, dated January 28, 2016 (File Nos. 333–184918 and 811–22767).

[7] In the event (a) the Adviser or any sub-adviser registers as a broker-dealer or becomes newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a registered broker-dealer or becomes affiliated with another broker-dealer, it will implement a fire wall with respect to its relevant personnel or broker-dealer affiliate, as applicable, regarding access to information concerning the composition of, or changes to, the portfolio and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding the portfolio. The Exchange represents that the Fund does not currently intend to use a sub-adviser.

[8] Additional information regarding the Fund, the Trust, and the Shares, including investment strategies, risks, creation and redemption procedures, fees, portfolio holdings disclosure policies, calculation of net asset value ("NAV"), distributions, and taxes, among other things, can be found in the Notice, Amendment No. 1 to the proposed rule change, Exemptive Order, and the Registration Statement, as applicable. *See* Notice, Amendment No. 1, Exemptive Order, and Registration Statement, *supra* notes 3–6, respectively.

[9] The term "under normal market conditions" as used herein includes, but is not limited to, the absence of adverse market, economic, political or other conditions, including extreme volatility or trading halts in the securities, commodities or futures markets, or the financial markets generally; operational issues causing dissemination of inaccurate market information; or *force majeure* type events such as systems failure, natural or man-made disaster, act of God, armed conflict, act of terrorism, riot or labor disruption, or any similar intervening circumstance. On a temporary basis, including for defensive purposes, during the initial invest-up period and during periods of high cash inflows or outflows, the Fund may depart from its principal investment strategies; for example, it may hold a higher than normal proportion of its assets in cash. During such periods, the Fund may not be able to achieve its investment objective. The Fund may adopt a defensive strategy when the Adviser believes securities and other instruments in which the Fund normally may invest have elevated risks due to political or economic factors and in other extraordinary circumstances.

[10] These securities will include securities that are issued or guaranteed by the U.S. Treasury, by various agencies of the U.S. government, or by various instrumentalities, which have been established or sponsored by the U.S. government. U.S. Treasury obligations are backed by the "full faith and credit" of the U.S. government. Securities issued or guaranteed by federal agencies and U.S. government-sponsored instrumentalities may or may not be backed by the full faith and credit of the U.S. government.

The Fund expects to exclusively gain exposure to Commodities indirectly by investing directly in the First Trust Subsidiary. The Fund's investment in the First Trust Subsidiary may not exceed 25% of the Fund's total assets. The Fund will not invest directly in Commodities, and neither the Fund nor the First Trust Subsidiary will invest directly in physical commodities.

B. Exchange's Description of the First Trust Subsidiary

The Fund's investment in the First Trust Subsidiary will be designed to provide the Fund with exposure to commodity markets within the limits of current federal income tax laws applicable to investment companies such as the Fund, which limit the ability of investment companies to invest directly in the derivative instruments.[13]

The First Trust Subsidiary will have the same investment objective as the Fund, but unlike the Fund, it may invest without limitation in Commodities. Eligible Commodities will be selected based on liquidity as measured by open interest (generally, the number of contracts that are outstanding at a particular time) and volume. The list of Commodities considered for inclusion can and will change over time. Through its investment process, the Adviser will seek to maximize the total return of a long/short commodity portfolio[14] while managing overall portfolio risk, sector risk, liquidity risk, margin risk, and position size risk. As stated above, in addition to Commodities, the First Trust Subsidiary may invest in Other Investments.

The First Trust Subsidiary will initially consider investing in Commodities set forth in the following table, which also provides each instrument's trading hours, exchange, and ticker symbol:

Commodity	Bloomberg exchange code[15]	Exchange name	Trading hours (E.T.)	Contract ticker (generic Bloomberg ticker)
Cattle, Live/Choice Average	CME	Chicago Mercantile Exchange	18:00–17:00	LC
Cocoa	NYB	ICE Futures Exchange	04:00–14:00	CC
Cotton/1–1/16″	NYB	ICE Futures Exchange	21:00–14:30	CT
Feeder Cattle	CME	Chicago Mercantile Exchange	18:00–17:00	FC
Coffee 'C'/Colombian	NYB	ICE Futures Exchange	03:30–14:00	KC
Soybeans/No. 2 Yellow	CBT	Chicago Board of Trade	20:00–14:15	S
Soybean Meal/48% Protein	CBT	Chicago Board of Trade	20:00–14:15	SM
Soybean Oil/Crude	CBT	Chicago Board of Trade	20:00–14:15	BO
Corn/No. 2 Yellow	CBT	Chicago Board of Trade	20:00–14:15	C
Wheat/No. 2 Hard Winter	CBT	Chicago Board of Trade	20:00–14:15	KW
Wheat/No. 2 Soft Red	CBT	Chicago Board of Trade	20:00–14:15	W
Sugar #11/World Raw	NYB	ICE Futures Exchange	02:30–14:00	SB
Hogs, Lean/Average Iowa/S Minn	CME	Chicago Mercantile Exchange	18:00–17:00	LH
Crude Oil, WTI/Global Spot	NYM	New York Mercantile Exchange.	18:00–17:15	CL
Crude Oil, Brent/Global Spot	ICE	ICE Futures Exchange	20:00–18:00	CO
NY Harb ULSD	NYM	New York Mercantile Exchange.	18:00–17:15	HO
Gas-Oil-Petroleum	ICE	ICE Futures Exchange	20:00–18:00	QS
Natural Gas, Henry Hub	NYM	New York Mercantile Exchange.	18:00–17:15	NG
Gasoline, Blendstock (RBOB)	NYM	New York Mercantile Exchange.	18:00–17:15	XB
Gold	CMX	Commodity Exchange	18:00–17:15	GC
Silver	CMX	Commodity Exchange	18:00–17:15	SI
Platinum	NYM	New York Mercantile Exchange.	18:00–17:15	PL
Copper High Grade/Scrap No. 2 Wire	CMX	Commodity Exchange	18:00–17:15	HG

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[11] The Fund intends to enter into repurchase agreements only with financial institutions and dealers believed by the Adviser to present minimal credit risks in accordance with criteria approved by the Trust's Board of Trustees ("Trust Board"). The Adviser will review and monitor the creditworthiness of these institutions. The Adviser will monitor the value of the collateral at the time the transaction is entered into and at all times during the term of the repurchase agreement.

[12] For the Fund's purposes, money market instruments will include: (i) Short-term, high-quality securities issued or guaranteed by non-U.S. governments, agencies and instrumentalities; (ii) non-convertible high-quality corporate debt securities with remaining maturities of not more than 397 days; (iii) money market mutual funds; (iv) commercial paper; and (v) certificates of deposit, bank time deposits, bankers' acceptances, and short-term negotiable obligations of U.S. and non-U.S. banks and financial institutions.

[13] The First Trust Subsidiary, which will be advised by the Adviser, will not be registered under the 1940 Act. As an investor in the First Trust Subsidiary, the Fund, as the First Trust Subsidiary's sole shareholder, will not have the protections offered to investors in registered investment companies. However, because the Fund will wholly own and control the First Trust Subsidiary, and the Fund and the First Trust Subsidiary will be managed by the Adviser, the First Trust Subsidiary will not take action contrary to the interest of the Fund or the Fund's shareholders. The Trust Board will have oversight responsibility for the investment activities of the Fund, including its expected investment in the First Trust Subsidiary, and the Fund's role as the sole shareholder of the First Trust Subsidiary. The Adviser will receive no additional compensation for managing the assets of the First Trust Subsidiary. In addition, the First Trust Subsidiary will enter into separate contracts for the provision of custody, transfer agency, and accounting agent services with the same or with affiliates of the same service providers that provide those services to the Fund.

[14] To be "long" means to hold or be exposed to a security or instrument with the expectation that its value will increase over time. To be "short" means to sell or be exposed to a security or instrument with the expectation that it will fall in value. The Fund, through the First Trust Subsidiary, will benefit if it has a long position in a Commodity that increases in value or a short position in a Commodity that decreases in value.

Commodity	Bloomberg exchange code[15]	Exchange name	Trading hours (E.T.)	Contract ticker (generic Bloomberg ticker)
Aluminum, LME Primary 3 Month Rolling Forward	LME	London Metal Exchange	15:00–14:45	LA
Lead, LME Primary 3 Month Rolling Forward	LME	London Metal Exchange	15:00–14:45	LL
Nickel, LME Primary 3 Month Rolling Forward	LME	London Metal Exchange	15:00–14:45	LN
Tin, LME Primary 3 Month Rolling Forward	LME	London Metal Exchange	15:00–14:45	LT
Zinc, LME Primary 3 Month Rolling Forward	LME	London Metal Exchange	15:00–14:45	LX

As the exchanges referenced above list additional Commodities, as currently listed Commodities on those exchanges that are not included above meet the Adviser's selection criteria, or as other exchanges list Commodities that meet the Adviser's selection criteria, the Adviser will include those Commodities in the list of possible investments of the First Trust Subsidiary. The list of Commodities and commodities markets considered for investment can and will change over time.

With respect to the Commodities held indirectly through the First Trust Subsidiary, not more than 10% of the weight[16] of such instruments (in the aggregate) shall consist of instruments whose principal trading market (a) is not a member of the Intermarket Surveillance Group ("ISG") or (b) is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.[17]

C. Exchange's Description of the Investment Restrictions

The Fund may not invest more than 25% of the value of its total assets in securities of issuers in any one industry. This restriction will not apply to (a) obligations issued or guaranteed by the U.S. government, its agencies, or instrumentalities, or (b) securities of other investment companies.

The First Trust Subsidiary's shares will be offered only to the Fund, and the Fund will not sell shares of the First Trust Subsidiary to other investors. The Fund and the First Trust Subsidiary will not invest in any non-U.S. equity securities (other than shares of the First Trust Subsidiary).

The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment), deemed illiquid by the Adviser.[18] The Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include securities subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

The Fund intends to qualify each year as a regulated investment company under Subchapter M of the Internal Revenue Code.

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[19] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with Section 6(b)(5) of the Exchange Act,[20] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission also finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,[21] which sets forth the finding of Congress that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities.

Quotation and last-sale information for the Shares will be available via Nasdaq proprietary quote and trade services, as well as in accordance with the Unlisted Trading Privileges and the Consolidated Tape Association ("CTA") plans for the Shares. On each business day, before commencement of trading in Shares in the Regular Market Session[22] on the Exchange, the Fund will disclose on its Web site the identities and quantities of the portfolio of securities, Commodities, and other assets ("Disclosed Portfolio," as defined in Nasdaq Rule 5735(c)(2)) held by the Fund and the First Trust Subsidiary that will form the basis for the Fund's calculation of NAV at the end of the business day.[23] The NAV of the Fund's

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[15] The exchange codes listed are Bloomberg shorthand codes for the corresponding exchanges. The New York Board of Trade is currently owned by the ICE Futures Exchange. Bloomberg continues to use NYB as its shorthand code for certain contracts formerly traded on the New York Board of Trade.

[16] To be calculated as the value of the Commodity divided by the total absolute notional value of the First Trust Subsidiary's Commodities.

[17] The Exchange states that the Commodity Futures Trading Commission ("CFTC") has adopted substantial amendments to CFTC Rule 4.5 relating to the permissible exemptions, and conditions for reliance on exemptions, from registration as a commodity pool operator. As a result of the instruments that will be indirectly held by the Fund, the Fund and the First Trust Subsidiary will be subject to regulation by the CFTC and National Futures Association ("NFA") as well as additional disclosure, reporting, and recordkeeping rules imposed upon commodity pools. The Adviser has previously registered as a commodity pool operator and is also a member of the NFA.

[18] In reaching liquidity decisions, the Adviser may consider the following factors: The frequency of trades and quotes for the security or other instrument; the number of dealers wishing to purchase or sell the security or other instrument and the number of other potential purchasers; dealer undertakings to make a market in the security or other instrument; and the nature of the security or other instrument and the nature of the marketplace in which it trades (*e.g.*, the time needed to dispose of the security or other instrument, the method of soliciting offers and the mechanics of transfer).

[19] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[22] *See* Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 4:00 a.m. to 9:30 a.m., Eastern Time; (2) Regular Market Session from 9:30 a.m. to 4:00 p.m. or 4:15 p.m., Eastern Time; and (3) Post-Market Session from 4:00 p.m. or 4:15 p.m. to 8 p.m., Eastern Time).

[23] Under accounting procedures to be followed by the Fund, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Fund will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business

Shares generally will be calculated once daily Monday through Friday as of the close of regular trading on Nasdaq, generally 4:00 p.m., Eastern Time.[24] In addition, for the Fund, an estimated value, defined in Rule 5735(c)(3) as the "Intraday Indicative Value," that reflects an estimated intraday value of the Fund's Disclosed Portfolio, (including the First Trust Subsidiary's portfolio), will be disseminated. The Intraday Indicative Value, available on the NASDAQ OMX Information LLC proprietary index data service[25] will be based upon the current value for the components of the Disclosed Portfolio and will be updated and widely disseminated by one or more major market data vendors and broadly displayed at least every 15 seconds during the Regular Market Session. The Intraday Indicative Value will be based on quotes and closing prices from the instruments' local market and may not reflect events that occur subsequent to the local market's close.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers. Pricing information for Fixed-Income Instruments, certificates of deposit, bank time deposits, and repurchase agreements will be available from major broker-dealer firms, major market data vendors, and Pricing Services. Pricing information for Commodities will be available from the applicable listing exchange and from major market data vendors. Money market mutual funds are typically priced once each business day and their prices will be available through the applicable fund's Web site or from major market data vendors. In addition, the Exchange notes that the Fund's Web site will include a form of the prospectus for the Fund and additional data relating to NAV and other applicable quantitative information.

The Commission also believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange states that it will obtain a representation from the issuer of the Shares that the NAV per Share will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. The Exchange also represents that it may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares of the Fund. The Exchange will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including the trading pauses under Nasdaq Rules 4120(a)(11) and (12). Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable.[26] Trading in the Shares also will be subject to Rule 5735(d)(2)(D), which sets forth circumstances under which Shares of the Fund may be halted.

The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees. The Exchange further states that the Adviser is not a broker-dealer, but is affiliated with a broker-dealer, and that the Adviser has implemented a fire wall with respect to its broker-dealer affiliate regarding access to information concerning the composition of, and changes to, the Fund's portfolio.[27] Further, the Commission notes that the Reporting Authority[28] that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.[29]

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules

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day. The Exchange represents that the Fund's disclosure of derivative positions in the Disclosed Portfolio will include sufficient information for market participants to use to value these positions intraday. On a daily basis, the Fund will disclose on the Fund's Web site the following information regarding each portfolio holding of the Fund and the First Trust Subsidiary, as applicable to the type of holding: Ticker symbol, CUSIP number or other identifier, if any; a description of the holding (including the type of holding); the identity of the security, commodity, or other asset or instrument underlying the holding, if any; quantity held (as measured by, for example, par value, notional value or number of shares, contracts or units); maturity date, if any; coupon rate, if any; effective date, if any; market value of the holding; and percentage weighting of the holding in the portfolio. The Web site information will be publicly available at no charge.

[24] According to the Exchange, the Fund's and the First Trust Subsidiary's investments will be valued daily. As described more specifically below, investments traded on an exchange (*i.e.*, a regulated market), will generally be valued at market value prices that represent last sale or official closing prices. In addition, non-exchange traded investments will generally be valued using prices obtained from third-party pricing services ("Pricing Service"). Specifically, money market instruments (other than money market mutual funds, certificates of deposit, and bank time deposits) and U.S. government and agency securities (collectively, "Fixed-Income Instruments") will typically be valued using information provided by a Pricing Service. In addition, debt instruments may be valued at evaluated mean prices, as provided by Pricing Services. Fixed-Income Instruments having a remaining maturity of 60 days or less when purchased will typically be valued at cost adjusted for amortization of premiums and accretion of discounts. Overnight repurchase agreements will be valued at amortized cost when it represents the best estimate of value. Term repurchase agreements (*i.e.*, those whose maturity exceeds seven days) will be valued at the average of the bid quotations obtained daily from at least two recognized dealers. Certificates of deposit and bank time deposits will typically be valued at cost. Money market mutual funds will typically be valued at their NAVs as reported by those funds to Pricing Services. Commodities will typically be valued at the closing price in the market where those instruments are principally traded. Because foreign exchanges may be open on different days than the days during which an investor may purchase or sell Shares, the value of the Fund's assets may change on days when investors are not able to purchase or sell Shares. Assets denominated in foreign currencies will be translated into U.S. dollars at the exchange rate of such currencies against the U.S. dollar as provided by a Pricing Service. The value of assets denominated in foreign currencies will be converted into U.S. dollars at the exchange rates in effect at the time of valuation.

[25] According to the Exchange, the NASDAQ OMX Global Index Data Service ("GIDS") is the Nasdaq global index data feed service that offers real-time updates, daily summary messages, and access to widely followed indexes and Intraday Indicative Values for ETFs. GIDS provides investment professionals with the daily information needed to track or trade Nasdaq indexes, listed ETFs, or third-party partner indexes and ETFs.

[26] These may include: (1) The extent to which trading is not occurring in the securities, Commodities, or the other assets constituting the Disclosed Portfolio of the Fund and the First Trust Subsidiary; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

[27] *See supra* note 7 and accompanying text. The Exchange further represents that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940 ("Advisers Act"). As a result, the Adviser and its related personnel are subject to the provisions of Rule 204A–1 under the Advisers Act relating to codes of ethics. This Rule requires investment advisers to adopt a code of ethics that reflects the fiduciary nature of the relationship to clients as well as compliance with other applicable securities laws. Accordingly, procedures designed to prevent the communication and misuse of non-public information by an investment adviser must be consistent with Rule 204A–1 under the Advisers Act. In addition, Rule 206(4)–7 under the Advisers Act makes it unlawful for an investment adviser to provide investment advice to clients unless such investment adviser has (i) adopted and implemented written policies and procedures reasonably designed to prevent violation, by the investment adviser and its supervised persons, of the Advisers Act and the Commission rules adopted thereunder; (ii) implemented, at a minimum, an annual review regarding the adequacy of the policies and procedures established pursuant to subparagraph (i) above and the effectiveness of their implementation; and (iii) designated an individual (who is a supervised person) responsible for administering the policies and procedures adopted under subparagraph (i) above.

[28] Nasdaq Rule 5735(c)(4) defines "Reporting Authority."

[29] *See* Nasdaq Rule 5735(d)(2)(B)(ii).

governing the trading of equity securities. In support of this proposal, the Exchange represented that:

(1) The Shares will be subject to Nasdaq Rule 5735, which sets forth the initial and continued listing criteria applicable to Managed Fund Shares.

(2) Trading in the Shares will be subject to the existing trading surveillances, administered by both Nasdaq and the Financial Industry Regulatory Authority ("FINRA") on behalf of the Exchange,[30] which are designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

(3) FINRA, on behalf of the Exchange, will communicate as needed regarding trading in the Shares and the Commodities with other markets and other entities that are members of ISG,[31] and FINRA may obtain trading information regarding trading in the Shares and in the Commodities held by the First Trust Subsidiary from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and in the Commodities held by the First Trust Subsidiary from markets and other entities that are members of ISG, which includes securities and futures exchanges, or with which the Exchange has in place a comprehensive surveillance sharing agreement. Moreover, FINRA, on behalf of the Exchange, will be able to access, as needed, trade information for certain fixed-income securities held by the Fund and the First Trust Subsidiary reported to FINRA's Trade Reporting and Compliance Engine ("TRACE").

(4) With respect to the Commodities held indirectly through the First Trust Subsidiary, not more than 10% of the weight[32] of such instruments (in the aggregate) shall consist of instruments whose principal trading market (a) is not a member of ISG or (b) is a market with which the Exchange does not have a comprehensive surveillance sharing agreement.

(5) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(6) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular for the Fund will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) Nasdaq Rule 2111A, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (c) how information regarding the Intraday Indicative Value and the Disclosed Portfolio is disseminated; (d) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(7) For initial and continued listing, the Fund must be in compliance with Rule 10A–3 under the Act.[33]

(8) The Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets.

(9) The Fund's investment in the First Trust Subsidiary may not exceed 25% of the Fund's total assets. In addition, the Fund will not invest directly in Commodities, and neither the Fund nor the First Trust Subsidiary will invest directly in physical commodities.

(10) The First Trust Subsidiary's shares will be offered only to the Fund, and the Fund will not sell shares of the First Trust Subsidiary to other investors. In addition, the Fund and the First Trust Subsidiary will not invest in any non-U.S. equity securities (other than shares of the First Trust Subsidiary).

(11) A minimum of 100,000 Shares will be outstanding at the commencement of trading on the Exchange.

The Exchange represents that all statements and representations made in the filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures shall constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements.[34] If the Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series. This approval order is based on all of the Exchange's representations, including those set forth above, in the Notice, and in Amendment No. 1 to the proposed rule change. The Commission notes that the Fund and the Shares must comply with the requirements of Nasdaq Rule 5735, including those set forth in this proposed rule change, as modified by Amendment No. 1 thereto, to be listed and traded on the Exchange on an initial and continuing basis.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1 thereto, is consistent with Section 6(b)(5) of the Act[35] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[36] that the proposed rule change (SR–NASDAQ–2016–021), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[37]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–09061 Filed 4–19–16; 8:45 am]

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[30] The Exchange represents that FINRA surveils trading on the Exchange pursuant to a regulatory services agreement and that the Exchange is responsible for FINRA's performance under this regulatory services agreement.

[31] For a list of the current members of ISG, *see www.isgportal.org*. The Exchange notes that not all components of the Disclosed Portfolio may trade on markets that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

[32] To be calculated as the value of the Commodity divided by the total absolute notional value of the First Trust Subsidiary's Commodities.

[33] *See* 17 CFR 240.10A–3.

[34] The Commission notes that certain other proposals for the listing and trading of Managed Fund Shares include a representation that the exchange will "surveil" for compliance with the continued listing requirements. *See, e.g.*, Amendment No. 2 to SR–BATS–2016–04, available at: *http://www.sec.gov/comments/sr-bats-2016-04/bats201604-2.pdf*. In the context of this representation, it is the Commission's view that "monitor" and "surveil" both mean ongoing oversight of the Fund's compliance with the continued listing requirements. Therefore, the Commission does not view "monitor" as a more or less stringent obligation than "surveil" with respect to the continued listing requirements.

[35] 15 U.S.C. 78f(b)(5).

[36] 15 U.S.C. 78s(b)(2).

[37] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77620; File No. SR–BATS–2015–124]

Self-Regulatory Organizations; BATS Exchange, Inc.; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1, 2, and 5, To List and Trade Shares of the REX VolMAXX Long VIX Weekly Futures Strategy ETF and the REX VolMAXX Inverse VIX Weekly Futures Strategy ETF of the Exchange Traded Concepts Trust

April 14, 2016.

I. Introduction

On December 30, 2015, BATS Exchange, Inc. ("Exchange" or "BATS") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares ("Shares") of the REX VolMAXX Long VIX Weekly Futures Strategy ETF and the REX VolMAXX Inverse VIX Weekly Futures Strategy ETF (each a "Fund" and collectively, "Funds") of the Exchange Traded Concepts Trust ("Trust") under BATS Rule 14.11(i). The proposed rule change was published for comment in the **Federal Register** on January 20, 2016.[3] On February 10, 2016, the Exchange filed Amendment No. 1 to the proposed rule change, and on February 12, 2016, the Exchange filed Amendment No. 2 to the proposed rule change.[4] On March 3, 2016, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[6] On March 28, 2016, the Exchange filed Amendment No. 5 to the proposed rule change.[7] The Commission received no comments on the proposed rule change. This order grants approval of the proposed rule change, as modified by Amendment Nos. 1, 2, and 5.

II. The Exchange's Description of the Proposal

The Exchange proposes to list and trade the Shares of the Funds under BATS Rule 14.11(i), which governs the listing and trading of Managed Fund Shares on the Exchange. The Shares will be offered by the Trust. According to the Exchange, the Trust is registered with the Commission as an open-end investment company and has filed a registration statement on behalf of the Funds on Form N–1A ("Registration Statement") with the Commission.[8] Exchange Traded Concepts, LLC will be the investment adviser ("Adviser")[9] to the Funds and Vident Investment Advisory, LLC will be the sub-adviser ("Sub-Adviser") to the Funds.[10] SEI Investments Global Funds Services serves as administrator for the Trust ("Administrator"); Brown Brothers Harriman & Co. serves as custodian, transfer agent, and dividend disbursing agent for the Trust; and SEI Investments Distribution Co. serves as the distributor for the Trust.[11]

A. The Funds' Investments

According to the Exchange, the REX VolMAXX Long VIX Weekly Futures Strategy ETF seeks to provide investors with long exposure to the implied volatility of the broad-based, large-cap U.S. equity market by obtaining investment exposure to an actively managed portfolio of exchange-traded futures contracts based on the Chicago Board Options Exchange, Incorporated ("CBOE") Volatility Index ("VIX Index") (such futures contracts, "VIX Futures Contracts") with weekly and monthly expirations. According to the Exchange, the REX VolMAXX Inverse VIX Weekly Futures Strategy ETF seeks to provide investors with inverse exposure to the implied volatility of the broad-based, large-cap U.S. equity market by obtaining investment exposure to an actively managed portfolio of exchange-traded VIX Futures Contracts with weekly and monthly expirations.[12]

According to the Exchange, each Fund will seek to achieve its investment objective by obtaining investment exposure to an actively managed portfolio of futures contracts based on VIX Futures Contracts with weekly and monthly expirations.[13] The Exchange states that each Fund will obtain such exposure by investing, through both long and short positions, only in the following instruments: VIX Futures Contracts; [14] total return swap agreements that provide exposure to VIX Futures Contracts; [15] the securities of other investment companies,[16] other pooled investment vehicles,[17] and exchange-traded notes [18] that provide exposure to VIX Futures Contracts; options on securities, securities indices, and currencies; [19] repurchase agreements [20] and reverse repurchase agreements; [21] and cash or cash equivalents (which include commercial paper [22] and U.S. government obligations [23]) to collateralize its exposure to the VIX Futures Contracts and for investment purposes.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 76884 (January 13, 2016), 81 FR 3195 ("Notice").

[4] On March 22, 2016, the Exchange filed Amendment No. 3 to the proposed rule change. On March 28, 2016, the Exchange withdrew Amendment No. 3 and filed and withdrew Amendment No. 4 to the proposed rule change.

[5] 15 U.S.C. 78s(b)(2).

[6] *See* Securities Exchange Act Release No. 77287, 81 FR 12540 (March 9, 2016).

[7] Amendment No. 5 replaced Amendment No. 1 (as subsequently amended by Amendment No. 2), which replaced and superseded the original filing in its entirety. In Amendment No. 5, the Exchange: (1) Provided additional clarification and specificity regarding the instruments in which the Funds may invest, including that the Funds will not invest in leveraged (*e.g.*, 2X, –2X, 3X or –3X) investment company securities; (2) provided additional clarification regarding the investment objective and investment restrictions of the Subsidiaries; (3) clarified how certain investments will be valued for computing each Fund's net asset value; (4) clarified where price information can be obtained for certain investments of the Funds; (5) supplemented the description of the information that will be contained in the Information Circular; (6) clarified that all statements and representations made in the filing regarding the description of the portfolio, limitations on portfolio holdings or reference assets, or the applicability of Exchange rules and surveillance procedures constitute continued listing requirements for listing the Shares on the Exchange; (7) stated that the issuer has represented to the Exchange that it will advise the Exchange of any failure by the Funds to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements, and if a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12; and (8) made other technical amendments. Because Amendment No. 5 does not materially alter the substance of the proposed rule change or raise unique or novel regulatory issues, Amendment No. 5 is not subject to notice and comment. Amendment No. 5 is available at *http://www.sec.gov/comments/sr-bats-2015-124/bats2015124-5.pdf*.

[8] *See* Registration Statement on Form N–1A for the Trust, dated December 29, 2015 (File Nos. 333–156529 and 811–22263). The Exchange states that the Commission has issued an order granting certain exemptive relief to the Trust under the Investment Company Act of 1940 ("1940 Act"). *See* Investment Company Act Release No. 30445 (April 2, 2013) (File No. 812–13969).

[9] The Exchange states that the Adviser is registered as a Commodity Pool Operator and that the Funds and their respective Subsidiaries (as defined below) will be subject to regulation by the Commodity Futures Trading Commission and to additional disclosure, reporting, and recordkeeping rules imposed upon commodity pools.

[10] The Exchange states that neither the Adviser nor the Sub-Adviser is registered as a broker-dealer or is affiliated with a broker-dealer. The Exchange states that in the event that (a) the Adviser or Sub-Adviser becomes a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.

[11] The Commission notes that additional information regarding the Trust, the Funds, and the Shares, including investment strategies, risks, creation and redemption procedures, calculation of net asset value ("NAV"), fees, portfolio holdings disclosure policies, distributions, and taxes, among other things, can be found in the Notice, Amendment No. 5, and the Registration Statement, as applicable. *See* Notice, *supra* note 3, Amendment No. 5, *supra* note 7, and Registration Statement, *supra* note 8.

[12] The Exchange represents that while the REX VolMAXX Long VIX Weekly Futures Strategy ETF generally will seek exposure to the VIX Index and the REX VolMAXX Inverse VIX Weekly Futures Strategy ETF generally will seek inverse exposure to the VIX Index, the Funds are not index tracking funds and will generally seek to enhance their performance by actively selecting VIX Futures Contracts of varying maturities and they can be expected to perform very differently from the VIX Index over all periods of time.

Each of the REX VolMAXX Long VIX Weekly Futures Strategy ETF and the REX VolMAXX Inverse VIX Weekly Futures Strategy ETF expects to gain exposure to certain of these investments by investing a portion of its assets in its wholly-owned Cayman Islands subsidiary, the REX VolMAXX Long VIX Weekly Futures Strategy Subsidiary I and the REX VolMAXX Inverse VIX Weekly Futures Strategy Subsidiary I, respectively (each a "Subsidiary" and, collectively, "Subsidiaries"). The Subsidiaries will be advised by the Adviser.[24] According to the Exchange, each Fund's investment in its Subsidiary is intended to provide the Fund with exposure to markets within the limits of current federal income tax laws applicable to investment companies such as the Funds, which limit the ability of investment companies to invest directly in certain futures contracts. According to the Exchange, each Subsidiary will have the same investment objective and investment restrictions as its applicable Fund and, except as otherwise noted, references to each Fund's investments may also be deemed to include the Fund's indirect investments through its Subsidiary. Each Fund will invest up to 25% of its total assets in its Subsidiary.

Each Fund may lend its portfolio securities in an amount not to exceed 33⅓% of the value of its total assets, and each Fund will receive collateral for each loaned security which is at least equal to the current market value of that security, marked to market each trading day. The Exchange represents that aside from each Fund's investments in its Subsidiary, each Fund and its Subsidiary will not invest in non-U.S. equity securities or options.

Each Fund intends to qualify each year as a regulated investment company under the Internal Revenue Code.

B. The Funds' Investment Restrictions

Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment) deemed illiquid by the Adviser [25] under the 1940 Act. Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets. Illiquid assets include assets subject to contractual or other restrictions on resale and other instruments that lack readily available markets as determined in accordance with Commission staff guidance.

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[13] According to the Exchange, the REX VolMAXX Long VIX Weekly Futures Strategy ETF expects the notional value of its exposure to VIX Futures Contracts to be equal to approximately 100% of its assets at all times and the weighted average of time to expiry of the VIX Futures Contracts to be less than one month at all times. The REX VolMAXX Inverse VIX Weekly Futures Strategy ETF expects the notional value of its exposure to VIX Futures Contracts to be equal to approximately 100% of its assets at the close of each trading day and the weighted average of time to expiry of the VIX Futures Contracts to be less than one month at all times.

[14] The Exchange represents that all VIX Futures Contracts held by the Funds will be exchange-traded.

[15] The Exchange states that to the extent practicable, each Fund will invest in swaps cleared through the facilities of a centralized clearing house. The Exchange also states that, to the extent that a Fund invests in swaps that are not centrally cleared, the Adviser will attempt to mitigate the Fund's credit risk by transacting only with large, well-capitalized institutions using measures designed to determine the creditworthiness of a counterparty. According to the Exchange, the Adviser will take various steps to limit counterparty credit risk. The Exchange represents that each Fund's investments in over-the-counter ("OTC") derivatives will not exceed 20% of its assets.

[16] Each Fund may invest in the securities of other investment companies, subject to applicable limitations under Section 12(d)(1) of the 1940 Act. These securities include only the following: The securities of exchange-traded investment companies including Portfolio Depositary Receipts (as defined in BATS Rule 14.11(b)); Index Fund Shares (as defined in BATS Rule 14.11(c)); and Managed Fund Shares (as defined in BATS Rule 14.11(i)); and money market mutual funds. The Exchange represents that although the Funds may invest in inverse investment company securities, the Funds will not invest in leveraged (*e.g.,* 2X, –2X, 3X or –3X) investment company securities.

[17] According to the Exchange, pooled investment vehicles include only the following instruments: Trust Issued Receipts (as defined in BATS Rule 14.11(f)); Commodity-Based Trust Shares (as defined in Rule 14.11(e)(4)); Currency Trust Shares (as defined in Rule 14.11(e)(5)); Commodity Index Trust Shares (as defined in Rule 14.11(e)(6)); Trust Units (as defined in Rule 14.11(e)(9)); and Paired Class Shares (as defined in NASDAQ Stock Market LLC Rule 5713). The Exchange represents that although the Funds may invest in inverse pooled investment vehicles, the Funds will not invest in leveraged (*e.g.,* 2X, –2X, 3X or –3X) pooled investment vehicles.

[18] The Exchange represents that although the Funds may invest in inverse ETNs, the Funds will not invest in leveraged (*e.g.,* 2X, –2X, 3X or –3X) ETNs.

[19] The Exchange states that all options written on indices or securities will be covered. According to the Exchange, for all OTC options, the Funds will seek, where possible, to use counterparties whose financial status is such that the risk of default is reduced; however, the risk of losses from default is still possible. The Exchange represents that the Sub-Adviser will monitor the financial standing of counterparties on an ongoing basis.

[20] According to the Exchange, the Funds follow certain procedures designed to minimize the risks inherent in repurchase agreements. The Exchange represents that it is the current policy of each Fund not to invest in repurchase agreements that do not mature within seven days if any such investment, together with any other illiquid assets held by the Fund, amount to more than 15% of the Fund's net assets. The Exchange states that the investments of the Funds in repurchase agreements, at times, may be substantial when, in the view of the Sub-Adviser, liquidity or other considerations so warrant.

[21] According to the Exchange, each Fund will establish a segregated account with the Trust's custodian bank in which the Fund will maintain cash, cash equivalents or other portfolio securities equal in value to its obligations in respect of reverse repurchase agreements. The Exchange represents that each Fund does not expect to engage, under normal circumstances, in reverse repurchase agreements with respect to more than 33⅓% of its assets.

[22] The Exchange states that the Funds may invest in commercial paper rated A–1 or A–2 by Standard and Poor's Ratings Services or Prime-1 or Prime-2 by Moody's Investors Service, Inc.

[23] U.S. government obligations include securities issued or guaranteed as to principal and interest by the U.S. government, its agencies, or instrumentalities, such as U.S. Treasury obligations, receipts, STRIPS, and U.S. Treasury zero-coupon bonds.

[24] The Exchange states that the Subsidiaries are not registered under the 1940 Act and are not directly subject to its investor protections, except as noted in the Registration Statement. However, according to the Exchange, each Subsidiary is wholly-owned and controlled by its respective Fund and is advised by the Adviser. Therefore, according to the Exchange, because of each Fund's ownership and control of its Subsidiary, the Subsidiary will not take action contrary to the interests of its respective Fund or its shareholders. Each Fund's Board of Trustees ("Board") has oversight responsibility for the investment activities of the Fund, including the Fund's expected investment in its Subsidiary, and the Fund's role as the sole shareholder of the Subsidiary. The Adviser receives no additional compensation for managing the assets of the Subsidiaries. The Exchange states that each Subsidiary will enter into separate contracts for the provision of custody, transfer agency, and accounting agent services with the same or with affiliates of the same service providers that provide those services to the applicable Fund.

[25] The Exchange states that, in reaching liquidity decisions, the Adviser may consider the following factors: The frequency of trades and quotes for the security; the number of dealers wishing to purchase or sell the security and the number of other potential purchasers; dealer undertakings to make a market in the security; and the nature of the security and the nature of the marketplace in which it trades (*e.g.,* the time needed to dispose of the security, the method of soliciting offers, and the mechanics of transfer).

Each Fund's investments will be consistent with the Fund's investment objective and will not be used to achieve leveraged or inverse leveraged returns.

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal to list and trade the Shares is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[26] In particular, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1, 2, and 5, is consistent with Section 6(b)(5) of the Act,[27] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission also finds that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[28] which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities.

According to the Exchange, quotation and last sale information for the Shares will be available on the facilities of the Consolidated Tape Association ("CTA"), and the previous day's closing price and trading volume information for the Shares will be generally available daily in the print and online financial press. Additionally, information regarding market price and volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Daily trading volume information will be available in the financial section of newspapers, through subscription services such as Bloomberg, Thomson Reuters, and International Data Corporation, which can be accessed by authorized participants and other investors, as well as through other electronic services, including major public Web sites.

In addition, for each Fund, the Intraday Indicative Value[29] will be updated and widely disseminated by one or more major market data vendors at least every 15 seconds during the Exchange's Regular Trading Hours.[30] On each business day, before commencement of trading in the Shares during Regular Trading Hours on the Exchange, each Fund will disclose on its Web site the Disclosed Portfolio[31] that will form the basis for the Fund's calculation of NAV at the end of the business day.[32] Each Fund's Web site will also include a form of the prospectus for the Fund that may be downloaded and additional data relating to NAV and other applicable quantitative information.

Intraday price quotations on cash and cash equivalents, repurchase agreements, and reverse repurchase agreements of the type held by the Funds are available from major broker-dealer firms and from third-parties, which may provide prices free with a time delay, or "live" with a paid fee. Price information for investment company securities (other than exchange-traded investment company securities) will be available from the applicable investment company's Web site and from market data vendors. Price information for OTC-traded options will be available from market data vendors. Major broker-dealer firms will provide intraday quotes on swaps of the type held by the Funds. Pricing information related to exchange-listed instruments, including exchange-listed options, securities of other investment companies, pooled investment vehicles, and exchange-traded notes, will be available directly from the listing exchange. Pricing information related to money market fund shares will be available through issuer Web sites and publicly available quotation services such as Bloomberg, Markit and Thomson Reuters. For VIX Futures Contracts, intraday information is available directly from CBOE. Intraday price information for the underlying investments of the Funds is also available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors.

The Commission further believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading when a reasonable degree of transparency cannot be assured. The Exchange will obtain a representation from the issuer of the Shares that the NAV will be calculated daily and that the NAV and the Disclosed Portfolio will be made available to all market participants at the same time. Further, trading in the Shares will be subject to BATS Rules 11.18 and 14.11(i)(4)(B)(iv), which set forth circumstances under which trading in Shares of a Fund may be halted. Trading may also be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which trading is not occurring in the instruments composing the Disclosed Portfolio of a Fund; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. The Reporting Authority that provides the Disclosed Portfolio must implement and maintain, or be subject to, procedures designed to prevent the use and dissemination of material, non-public information regarding the actual components of the portfolio.[33] The Exchange represents that it prohibits the distribution of material non-public information by its employees. The Exchange states that neither the Adviser nor the Sub-Adviser is or is affiliated with a broker-dealer and that, in the event that (a) the Adviser or Sub-Adviser becomes a broker-dealer or newly affiliated with a broker-dealer, or (b) any new adviser or sub-adviser is a broker-dealer or becomes affiliated with a broker-dealer, it will implement a fire wall with respect to its relevant personnel or such broker-dealer affiliate, as applicable, regarding access to information concerning the composition and/or changes to the portfolio, and will be subject to procedures designed to prevent the use and dissemination of material non-public information regarding such portfolio.[34] Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. The Exchange may obtain information regarding trading in the Shares, exchange-listed options, exchange-listed equity securities, and the underlying futures via the Intermarket Surveillance Group ("ISG") from other exchanges who are members or affiliates of the ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, the Exchange is able to access, as needed, trade information for certain fixed income instruments reported to FINRA's Trade Reporting and Compliance Engine.

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[26] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[27] 15 U.S.C. 78f(b)(5).

[28] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[29] According to the Exchange, the Intraday Indicative Value for each Fund will reflect an estimated intraday value of such Fund's portfolio, and will be based upon the current value for the components of the Disclosed Portfolio (as defined below). The quotations of certain of the Funds' holdings may not be updated for purposes of calculating Intraday Indicative Value during U.S. trading hours where the market on which the underlying asset is traded settles prior to the end of the Exchange's Regular Trading Hours. The Exchange's Regular Trading Hours are 9:30 a.m. to 4:00 p.m. Eastern Time.

[30] The Exchange notes that several major market data vendors display and/or make widely available Intraday Indicative Values published via the CTA or other data feeds.

[31] The Disclosed Portfolio will include, as applicable: Ticker symbol or other identifier, a description of the holding, identity of the asset upon which the derivative is based, the strike price for any options, the quantity of each security or other asset held as measured by select metrics, maturity date, coupon rate, effective date, market value and percentage weight of the holding in the portfolio. The Web site and information will be publicly available at no charge.

[32] The NAV of each Fund will generally be determined at 4:15 p.m. Eastern Time each business day when the Exchange is open for trading.

[33] *See* BATS Rule 14.11(i)(4)(B)(ii)(b).

The Exchange represents that it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. In support of this proposal, the Exchange has made the following representations:

(1) The Shares will be subject to BATS Rule 14.11(i), which sets for the initial and continued listing criteria applicable to Managed Fund Shares.

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) Trading of the Shares through the Exchange will be subject to the Exchange's surveillance procedures for derivative products, including Managed Fund Shares, and such surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws.

(4) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (a) The procedures for purchases and redemptions of Shares in creation units (and that Shares are not individually redeemable); (b) BATS Rule 3.7, which imposes suitability obligations on Exchange members with respect to recommending transactions in the Shares to customers; (c) how information regarding the Intraday Indicative Value and Disclosed Portfolio is disseminated; (d) the risks involved in trading the Shares during the Pre-Opening and After Hours Trading Sessions (as defined in the Exchange's rules) when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and continued listing, each Fund must be in compliance with Rule 10A–3 under the Act.[35]

(6) All VIX Futures Contracts held by the Funds will be exchange-traded.

(7) All of the futures contracts in the Disclosed Portfolio for each Fund (including futures contracts held by each Subsidiary) will trade on markets that are a member of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.

(8) Aside from each Fund's investments in its Subsidiary, neither the Fund nor its respective Subsidiary will invest in non-U.S. equity securities or options.

(9) Although the Funds may invest in inverse investment company securities, pooled investment vehicles, and ETNs, the Funds will not invest in leveraged (*e.g.,* 2X, –2X, 3X or –3X) investment company securities, pooled investment vehicles, or ETNs.

(10) Each Fund's investments in OTC derivatives will not exceed 20% of its assets.

(11) Each Fund may hold up to an aggregate amount of 15% of its net assets in illiquid assets (calculated at the time of investment) deemed illiquid by the Adviser under the 1940 Act. Each Fund will monitor its portfolio liquidity on an ongoing basis to determine whether, in light of current circumstances, an adequate level of liquidity is being maintained, and will consider taking appropriate steps in order to maintain adequate liquidity if, through a change in values, net assets, or other circumstances, more than 15% of the Fund's net assets are held in illiquid assets.

(12) Each Fund's investments will be consistent with the Fund's investment objective and will not be used to achieve leveraged or inverse leveraged returns.

(13) A minimum of 100,000 Shares for each Fund will be outstanding at the commencement of trading on the Exchange.

The Exchange represents that all statements and representations made in the filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange rules and surveillance procedures constitute continued listing requirements for listing the Shares on the Exchange. In addition, the issuer has represented to the Exchange that it will advise the Exchange of any failure by a Fund to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will surveil for compliance with the continued listing requirements. If a Fund is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under Exchange Rule 14.12.

This approval order is based on all of the Exchange's representations, including those set forth above and in Amendment No. 5. The Commission notes that the Funds and the Shares must comply with the requirements of BATS Rule 14.11(i) to be initially and continuously listed and traded on the Exchange.

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1, 2, and 5, is consistent with Section 6(b)(5) of the Act[36] and Section 11A(a)(1)(C)(iii) of the Act[37] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[38] that the proposed rule change (SR–BATS–2015–124), as modified by Amendment Nos. 1, 2, and 5, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[39]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–09062 Filed 4–19–16; 8:45 am]

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[34] The Exchange represents that an investment adviser to an open-end fund is required to be registered under the Investment Advisers Act of 1940.

[35] *See* 17 CFR 240.10A–3.

[36] 15 U.S.C. 78f(b)(5).

[37] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[38] 15 U.S.C. 78s(b)(2).

[39] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, April 21, 2016 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or her designee, has certified that, in her opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(7), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Stein, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting will be:

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings;

Adjudicatory matters; and

Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: April 14, 2016.

Brent J. Fields,

Secretary.

[FR Doc. 2016–09210 Filed 4–18–16; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–77621; File No. SR–CBOE–2016–031]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend the Fees Schedule

April 14, 2016.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 1, 2016, Chicago Board Options Exchange, Incorporated (the "Exchange" or "CBOE") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fees Schedule. Specifically, the Exchange proposes to make changes to the Facility Fees section of the Fees Schedule to remove references to FBW,[3] which has been decommissioned, effective March 31, 2016.[4] Pursuant to the Facilities Fees section of the Fees Schedule, the Exchange charges Trading Permit Holders ("TPHs") a monthly fee of $450.00 per login ID per month for the use of a FBW.[5] The Exchange assesses these facility fees in arrears during the first week of the following month. For example, a TPH will be billed in March for use of an FBW in February. Monthly fees are assessed and applied in their entirety and are not prorated.[6] Consequently, a TPH that cancels an FBW login ID on March 15 will still be charged the $450.00 fee for all of March on the April bill. FBW login IDs are renewed automatically for the next month unless the TPH submits written notification to the Market Operations Department by 3:00 p.m. on the second-to-last business day of the prior month to cancel the FBW login ID at or prior to the end of the applicable month.[7]

The Exchange proposes to make changes to the Facility Fees section of the Fees Schedule to delete the FBW line-item and remove references to FBW from the FBW2 line-item. As stated above, FBW has been decommissioned, effective March 31, 2016. Accordingly, these references in the Fees Schedule are no longer needed. The Exchange notes that legacy-FBW users that had active login IDs during March will be billed in arrears on their April bills.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[9] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] FBW is an order management tool used by Floor Brokers to handle orders on the floor of the Exchange. FBW is a third-party facility of the Exchange.

[4] *See id.*

[5] *See* Fees Schedule, page 9.

[6] *See id.*

[7] The Fees Schedule also provides that "[f]or every FBW login a TPH has the FBW2 fee will be waived on a one-to-one basis for the months of January 2016 through March 2016." The Exchange also proposes to delete this sentence as FBW will no longer exist as of March 31, 2016 and therefore, the Exchange will not be offering to waive the FBW2 fee on a one-to-one basis after March 31, 2016.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

In particular, the Exchange believes that the proposed rule change is consistent with the Act in that it ensures clarity in the rules. The Exchange believes that removing the obsolete term "FBW" from the rules, maintains clarity in the rules and eliminates potential confusion. The Exchange believes that the alleviation of potential confusion will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed changes to conform Exchange rules and alleviate confusion are not intended for competitive reasons and only apply to CBOE. The Exchange also does not believe the proposed rule change effects intramarket or intermarket competition, and notes that no rights or obligations of Trading Permit Holders are affected by the change.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and paragraph (f) of Rule 19b–4[12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2016–031 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2016–031. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2016–031, and should be submitted on or before May 11, 2016.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2016–09063 Filed 4–19–16; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 9527]

Secretary of State's Determination Under the International Religious Freedom Act of 1998

SUMMARY: The Secretary of State's designation of "countries of particular concern" for religious freedom violations.

Pursuant to Section 408(a) of the International Religious Freedom Act of 1998 (Pub. L. 105–292), as amended (the Act), notice is hereby given that, on February 29, 2016, the Secretary of State, under authority delegated by the President, has designated each of the following as a "country of particular concern" (CPC) under sec. 402(b) of the Act, for having engaged in or tolerated particularly severe violations of religious freedom: Burma, China, Eritrea, Iran, the Democratic People's Republic of Korea, Saudi Arabia, Sudan, Tajikistan, Turkmenistan, and Uzbekistan.

The Secretary simultaneously designated the following Presidential Actions for these CPCs:

For Burma, the existing ongoing arms embargo referenced in 22 CFR 126.1(a), pursuant to sec. 402(c)(5) of the Act;

For China, the existing ongoing restriction on exports to China of crime control and detection instruments and equipment, under the Foreign Relations Authorization Act of 1990 and 1991 (Pub. L. 101–246), pursuant to sec. 402(c)(5) of the Act;

For Eritrea, the existing ongoing arms embargo referenced in 22 CFR 126.1(a), pursuant to sec. 402(c)(5) of the Act;

For Iran, the existing ongoing travel restrictions based on serious human rights abuses under sec. 221(a)(1)(C) of the Iran Threat Reduction and Syria Human Rights Act of 2012, pursuant to sec. 402(c)(5) of the Act;

For the Democratic People's Republic of Korea, the existing ongoing restrictions to which the Democratic People's Republic of Korea is subject, pursuant to sec. 402 and 409 of the Trade Act of 1974 (the Jackson-Vanik Amendment), pursuant to sec. 402(c)(5) of the Act;

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[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f).

[13] 17 CFR 200.30–3(a)(12).

For Saudi Arabia, a waiver as required in the "important national interest of the United States," pursuant to sec. 407 of the Act;

For Sudan, the restriction in the annual Department of State, Foreign Operations, and Related Programs Appropriations Act on making certain appropriated funds available for assistance to the Government of Sudan, currently set forth in sec. 7042(k) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2015 (Div. J, Pub. L. 113–235), and any provision of law that is the same or substantially the same as this provision, pursuant to sec. 402(c)(5) of the Act;

For Tajikistan, a waiver as required in the "important national interest of the United States," pursuant to sec. 407 of the Act;

For Turkmenistan, a waiver as required in the "important national interest of the United States," pursuant to sec. 407 of the Act;

For Uzbekistan, a waiver as required in the "important national interest of the United States," pursuant to sec. 407 of the Act.

Dated: April 14, 2016.

Dave Morris,

Acting Director, Office of International Religious Freedom, Department of State.

[FR Doc. 2016–09163 Filed 4–19–16; 8:45 am]

BILLING CODE 4710–18–P

DEPARTMENT OF STATE

[Public Notice: 9526]

U.S. Advisory Commission on Public Diplomacy

ACTION: Notice of meeting.

The U.S. Advisory Commission on Public Diplomacy will hold a public meeting from 10:00 a.m. until 11:30 a.m., Thursday, May 12, 2016 in Room SVC 203–02 of the Capitol Visitors Center, Senate Side on First Street NE., Washington, DC 20002.

The meeting's topic will be "Presidential Priorities for Public Diplomacy" and will feature officials from the National Security Council, U.S. Department of State and Broadcasting Board of Governors. Other representatives from the State Department will be in attendance.

This meeting is open to the public, members and staff of Congress, the State Department, Defense Department, the media, and other governmental and non-governmental organizations. To attend and make any requests for reasonable accommodation, email *pdcommission@state.gov* by 5 p.m. on Monday, May 9, 2016. Please arrive for the meeting by 9:45 a.m. to allow for a prompt meeting start.

The United States Advisory Commission on Public Diplomacy appraises U.S. Government activities intended to understand, inform, and influence foreign publics. The Advisory Commission may conduct studies, inquiries, and meetings, as it deems necessary. It may assemble and disseminate information and issue reports and other publications, subject to the approval of the Chairperson, in consultation with the Executive Director. The Advisory Commission may undertake foreign travel in pursuit of its studies and coordinate, sponsor, or oversee projects, studies, events, or other activities that it deems desirable and necessary in fulfilling its functions.

The Commission consists of seven members appointed by the President, by and with the advice and consent of the Senate. The members of the Commission represent the public interest and are selected from a cross section of educational, communications, cultural, scientific, technical, public service, labor, business, and professional backgrounds. Not more than four members are from any one political party. The President designates a member to chair the Commission.

The current members of the Commission are: Mr. William Hybl of Colorado, Chairman; Ambassador Lyndon Olson of Texas, Vice Chairman; Mr. Sim Farar of California, Vice Chairman; Ambassador Penne Korth-Peacock of Texas; Ms. Lezlee Westine of Virginia; and Ms. Anne Terman Wedner of Illinois.

Mr. Douglas Wilson of Delaware has been nominated by the President to fill the current vacancy on the Commission and Ms. Georgette Mosbacher of New York has been nominated by the President to replace Ms. Lezlee Westine. They are both currently awaiting Senate confirmation.

To request further information about the meeting or the U.S. Advisory Commission on Public Diplomacy, you may contact its Executive Director, Katherine Brown, at *BrownKA4@state.gov*.

Dated: April 12, 2016.

Katherine Brown,

Executive Director, Department of State.

[FR Doc. 2016–09162 Filed 4–19–16; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF STATE

[Public Notice: 9525]

Culturally Significant Objects Imported for Exhibition Determinations: "Turner's Whaling Pictures" Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257–1 of December 11, 2015), I hereby determine that the objects to be included in the exhibition "Turner's Whaling Pictures," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about May 10, 2016, until on or about August 7, 2016, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the imported objects, contact the Office of Public Diplomacy and Public Affairs in the Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

Dated: April 12, 2016.

Mark Taplin,

Deputy Assistant Secretary for Policy, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2016–09161 Filed 4–19–16; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36006]

West Branch Intermediate Holdings, LLC and Continental Rail, LLC—Continuance in Control Exemption—Central Gulf Acquisition Company

West Branch Intermediate Holdings, LLC (West Branch) and Continental Rail, LLC (Continental), both noncarriers, have filed a verified notice of exemption pursuant to 49 CFR 1180.2(d)(2) to continue in control of Central Gulf Acquisition Company (CGAC) upon CGAC's becoming a Class III rail carrier.[1]

This transaction is related to (1) a concurrently filed verified notice of exemption in *Central Gulf Acquisition Co.—Acquisition & Operation Exemption—CG Railway, Inc.,* Docket No. FD 36007, wherein CGAC seeks Board approval to acquire CG Railway, Inc., a Class III rail carrier, from International Shipholding Corporation, and provide an intermodal rail/water service between Mobile, Ala., and Coatzacoalcos, Veracruz, Mexico, utilizing charters of railroad car ferries equipped with tracks.[2]

The transaction in this proceeding may be consummated on or after May 4, 2016, the effective date of the exemption (30 days after the verified notice of exemption was filed).

West Branch and Continental certify that: (1) The rail lines to be operated by CGAC do not connect with any other railroads in the corporate family; (2) the transaction is not part of a series of anticipated transactions that would connect these rail lines with each other or any railroad in their corporate family; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Stay petitions must be filed no later than April 27, 2016 (at least seven days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to Docket No. FD 36006, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on John D. Heffner, Strasburger & Price, LLP, 1025 Connecticut Ave. NW., Suite 717, Washington, DC 20036.

Board decisions and notices are available on our Web site at "*WWW.STB.DOT.GOV.*"

Decided: April 15, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2016–09106 Filed 4–19–16; 8:45 am]

BILLING CODE 4915–01–P

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[1] The parties state that: (1) West Branch is a limited liability company, formed for the purpose of acquiring shortline railroads; (2) Continental is a limited liability company, formed for the purpose of managing and operating shortline railroads; and (3) West Branch's wholly owned subsidiary, Delta Southern Railroad, Inc. (DSR), is an existing Class III rail carrier. West Branch states that it acquired the stock of DSR from its former owners in a transaction outside of the Board's jurisdiction.

[2] In Docket No. FD 36007, CGAC also filed a petition to waive the 60-day labor notice requirements of 49 CFR 1150.32(e) in order for the acquisition and operation transaction to be consummated on or before the scheduled consummation date. The notice and petition for waiver in FD 36007 will be addressed in a separate decision.

SURFACE TRANSPORTATION BOARD

[Docket No. AB 55 (Sub–No. 758X)]

CSX Transportation, Inc.—Discontinuance of Service Exemption—in Dickenson County, Va.

CSX Transportation, Inc. (CSXT), filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over an approximately 2.2-mile rail line on CSXT's Southern Region, Huntington Division, Kingsport Subdivision, Engineering Appalachian Division, also known as the Nora Branch, between milepost ZN 0.0 and milepost ZN 2.2 in Nora, Dickenson County, Va. (the Line). The Line traverses United States Postal Service Zip Code 24272 and is served by the station at Nora at milepost Z 26 (FSAC 50026/OPSL 24600).[1]

CSXT has certified that: (1) No local traffic has moved over the Line for at least two years; (2) because the Line is not a through route, no overhead traffic has operated, and, therefore, none needs to be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line is pending either with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) to subsidize continued rail service has been received, this exemption will be effective on May 20, 2016, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA to subsidize continued rail service under 49 CFR 1152.27(c)(2)[2] must be filed by April 29, 2016.[3] Petitions to reopen must be filed by May 10, 2016, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CSXT's representative: Louis E. Gitomer, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

If the verified notice contains false or misleading information, the exemption is void ab initio.

Board decisions and notices are available on our Web site at "*WWW.STB.DOT.GOV.*"

Decided: April 15, 2016.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2016–09107 Filed 4–19–16; 8:45 am]

BILLING CODE 4915–01–P

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[1] CSXT states that the station is located on the main line at milepost Z 26 where the Nora Branch connects to the main line at milepost ZN 0.0.

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

[3] Because this is a discontinue proceeding and not an abandonment, interim trail use/rail banking and public use conditions are not appropriate. Because there will be an environmental review during abandonment, this discontinuance does not require an environmental review.

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists the projects approved by rule by the Susquehanna River Basin Commission during the period set forth in "**DATES**."

DATES: March 1–31, 2016.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(f) for the time period specified above:

Approvals by Rule Issued Under 18 CFR 806.22(f)

1. Seneca Resources Corporation, Pad ID: Gamble Pad A, ABR–201110103.R1, Gamble Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 4, 2016.

2. XTO Energy Incorporated, Pad ID: PA Tract Unit I, ABR–201108040.R1, Chapman Township, Clinton County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 4, 2016.

3. XTO Energy Incorporated, Pad ID: PA Tract Unit E, ABR–201108041.R1, Chapman Township, Clinton County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 4, 2016.

4. XTO Energy Incorporated, Pad ID: PA Tract Unit G, ABR–201109018.R1, Chapman Township, Clinton County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 7, 2016.

5. SWN Production Company, LLC, Pad ID: Knapik Well Pad, ABR–201102033.R1, Liberty Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 8, 2016.

6. SWN Production Company, LLC, Pad ID: Hayes Well Pad, ABR–201102034.R1, Silver Lake Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 9, 2016.

7. SWEPI LP, Pad ID: Cole 495, ABR–201102016.R1, Richmond Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 9, 2016.

8. SWEPI LP, Pad ID: Boroch 477, ABR–201102018.R1, Charleston Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 9, 2016.

9. WPX Energy Appalachia, LLC, Pad ID: M. Martin 1V, ABR–201007081.R1, Sugarloaf Township, Columbia County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 9, 2016.

10. Seneca Resources Corporation, Pad ID: Gamble Pad M, ABR–201603001, Eldred Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 11, 2016.

11. Seneca Resources Corporation, Pad ID: DCNR 100 PAD E, ABR–201105009.R1, McIntyre Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 11, 2016.

12. Anadarko E&P Onshore, LLC, Pad ID: Larrys Creek F&G Pad C, ABR–201105014.R1, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 11, 2016.

13. Talisman Energy USA, Inc., Pad ID: 05 100 Dewing R, ABR–201102020.R1, Warren Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: March 11, 2016.

14. Chesapeake Appalachia, LLC, Pad ID: ACW, ABR–201107004.R1, Leroy Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: March 11, 2016.

15. Chesapeake Appalachia, LLC, Pad ID: Belawske, ABR–201107002.R1, Burlington Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: March 11, 2016.

16. Chesapeake Appalachia, LLC, Pad ID: SJW, ABR–201107003.R1, Wilmot Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: March 11, 2016.

17. Chesapeake Appalachia, LLC, Pad ID: Fisher, ABR–201107047.R1, Wysox Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: March 11, 2016.

18. Chesapeake Appalachia, LLC, Pad ID: Layton, ABR–201107036.R1, Litchfield Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: March 11, 2016.

19. SWEPI LP, Pad ID: Kuhl 529, ABR–201102014.R1, Richmond Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 11, 2016.

20. SWEPI LP, Pad ID: Stanley 1106, ABR–201102015.R1, Osceola Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 11, 2016.

21. SWEPI LP, Pad ID: MY TB INV LLC 891, ABR–201102010.R1, Deerfield Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 11, 2016.

22. EXCO Resources (PA), LLC, Pad ID: DCNR Tract 323 Pad-2, ABR–201012003.R1, Pine Township, Clearfield County, Pa.; Consumptive Use of Up to 8.0000 mgd; Approval Date: March 21, 2016.

23. EQT Production Company, Pad ID: Turkey, ABR–201107040.R1, Huston Township, Clearfield County, Pa.; Consumptive Use of Up to 3.0000 mgd; Approval Date: March 21, 2016.

24. Frontier Natural Resources, Inc., Pad ID: Winner 1, ABR–201101027.R1, West Keating Township, Clinton County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 21, 2016.

25. Pennsylvania General Energy Company, LLC, Pad ID: COP Tract 729 Pad E, ABR–201107046.R1, Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 3.5000 mgd; Approval Date: March 25, 2016.

26. SWN Production Company, LLC, Pad ID: Sadecki Well Pad, ABR–201105020.R1, Liberty Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 25, 2016.

27. SWN Production Company, LLC, Pad ID: Mitchell Well Pad, ABR–201105026.R1, Franklin Township, Susquehanna County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 25, 2016.

28. Anadarko E&P Onshore, LLC, Pad ID: COP Tract 728 Pad H, ABR–201105006.R1, Watson Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 28, 2016.

29. Anadarko E&P Onshore, LLC, Pad ID: COP Tract 728 Pad G, ABR–201105007.R1, Watson Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: March 28, 2016.

30. Chesapeake Appalachia, LLC, Pad ID: Alexander, ABR–201108031.R1, Terry Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: March 28, 2016.

31. Chesapeake Appalachia, LLC, Pad ID: Merryall, ABR–201108047.R1, Wyalusing Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: March 28, 2016.

32. Chesapeake Appalachia, LLC, Pad ID: Albertson, ABR–201108048.R1, Athens Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: March 28, 2016.

Authority: Pub. L. 91–575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806, 807, and 808.

Dated: April 14, 2016.

Stephanie L. Richardson,

Secretary to the Commission.

[FR Doc. 2016–09054 Filed 4–19–16; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Policy Clarification for Acceptance of Documents With Digital Signatures by the Federal Aviation Administration Aircraft Registry

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of FAA policy clarification.

SUMMARY: Notice is hereby given of the FAA's clarification of its policy regarding the acceptance of documents submitted to the FAA Aircraft Registry with digital signatures in support of aircraft registration under 14 CFR 47.13 and conveyances or security documents submitted to the FAA Aircraft Registry regarding claims and interests under 14 CFR 49.13.

DATES: *Effective Date:* The policy described herein is effective May 1, 2016.

FOR FURTHER INFORMATION CONTACT: Ladeana G. Peden at 405–954–3296, Office of Aeronautical Center Counsel (AMC–7), Federal Aviation Administration, 6500 S. MacArthur Blvd., Oklahoma City, Oklahoma 73169.

Background

The FAA reviewed policies and practices regarding the acceptance of digital signatures on documents filed with the FAA Aircraft Registry. Based on that review we find that signatures, other than hand scribed signatures, are acceptable under State law. (Historically, the FAA has accepted instruments, for recording, based on their validity under state law. See generally 49 U.S.C. 44108(c)) Specific court cases have held that it is immaterial with what kind of instrument a signature is made. See *Maricopa County* v. *Osborn,* 60 Ariz 290 (1943); and *State of North Carolina* v. *David Leroy Watts,* 222 SE. 2d 389 (1976). Selected State statutes also provide that digitally signed communications are signed writings. See Ca. Gov't Code 16.5 (West 1995); also the Illinois Financial Institutions Digital Signature Act, 205 Ill. Comp. Stat. 705/10 (West 1998). For a general discussion of Signatures, see *Corpus Juris Secundum,* 80 C.J.S. *Signatures, § 7 (2000).*

On October 21, 1998, Public Law 105–277, Government Paperwork Elimination Act, directed the Office of Management and Budget (OMB) to develop procedures for the use and acceptance of electronic signatures by Federal agencies. The Act requires that, when practicable, Federal agencies should use electronic forms, electronic filing, and digital signatures to conduct official business with the public.

The Electronic Signatures in Global and National Commerce Act, Public Law (Pub. L.) 106–229, enacted June 30, 2000, provides that the use of electronic records and electronic signatures is an acceptable practice when conducting interstate and foreign commerce.

On October 31, 2008, the U.S. Department of Transportation, Federal Aviation Administration, published FAA Order 1370.104, Digital Signature Policy. This Order established the FAA policy for the use of digital signatures. The Order states "Electronic signatures describe digital markings used to bind a party or, to authenticate a record. It is considered the digital equivalent of the traditional handwritten signature used to sign a contract or document." The policy defines a digital signature as:

> . . . a type of electronic signature that is legally acceptable and offers both signer and transaction authentication. The digital signature is the most secure and full-featured type of electronic signature. Digital signatures are federally acceptable types of electronic signatures for business transactions as specified in the National Institutes of Standards and Technology (NIST) guidelines.

14 CFR 47.13(a) provides "Each person signing an Aircraft Registration Application, AC Form 8050–1, or a document submitted as supporting evidence under this part, must sign in ink *or by other means acceptable to the FAA.*" (emphasis added) 14 CFR 49.13(a) provides "Each signature on a conveyance must be in ink."

Black's Law Dictionary, 7th Edition ("Black's"), defines a signature as "[a] person's name or mark written by that person or at the person's direction. 2. . . . Any name, mark or writing used with the intention of authenticating a document." Black's defines a digital signature as "[a] secure, digital code attached to an electronically transmitted message that uniquely identifies and authenticates the sender."

Based on the foregoing, the FAA Civil Aviation Registry, Aircraft Registration Branch determined that ink signatures and legible digital signatures, comply with the signature requirements of 14 CFR parts 47 and 49.

Policy Clarification

Effective May 1, 2016 the FAA Civil Aircraft Registry, Aircraft Registration Branch (the "Aircraft Registry") will accept printed duplicates of electronic documents that display legible, digital signatures that are filed in compliance with Parts 47 and 49 of the FAA Regulations (14 CFR parts 47 & 49). These documents include but are not limited to the following:

(i) Aircraft Registration Application, AC Form 8050–1;

(ii) Aircraft Bill of Sale, AC Form 8050–2, or equivalent transfer documents;

(iii) Security documents;

(iv) Conditional Sales Contracts;

(v) Leases; and,

(vi) Any supporting authorization documents such as Powers of Attorney, Trust Agreements, and supplements of related documents, and Limited Liability Company Statements, et-cetera.

In order to accommodate applicants for aircraft registration, the Aircraft Registry will make available a downloadable Aircraft Registration Application, AC Form 8050–1. Applicants may sign the form using a legible digital signature. A printed duplicate of the digitally signed application may be submitted in support of aircraft registration and a second duplicate copy may be retained in the aircraft as temporary 47.31 authority to operate the aircraft within the United States, in lieu of the pink copy of Form 8050–1 permitted under 14 CFR 47.31(c), pending registration of the aircraft.

Upon receipt of a document with a digital signature by the FAA Civil Aircraft Registry, Aircraft Registration Branch (the Aircraft Registry), FAA Legal Instrument Examiners will review each document and determine whether the document has a legible and acceptable digital signature. A legible and acceptable digital signature will have, at minimum, the following components:

(1) Shows the name of the signer and is applied in a manner to execute or validate the document;

(2) Includes the typed or printed name of the signer below or adjacent to the signature when the signature uses a digitized or scanned version of the signer's hand scribed signature or the name is in a cursive font;

(3) Shows the signer's corporate, managerial, or partnership title as part of or adjacent to the digital signature when the signer is signing on behalf of an organization or legal entity;

(4) Shows evidence of authentication of the signer's identity such as the text "digitally signed by" along with the software provider's seal/watermark, date and time of execution; or, have an authentication code or key identifying the software provider; and

(5) Has a font, size and color density that is clearly legible and reproducible when reviewed, copied and scanned into a black on white format.

Documents digitally signed in the forgoing manner will be considered facially valid and will be acceptable for review and consideration by the FAA Civil Aircraft Registry, Aircraft Registration Branch (the Aircraft Registry) for recordation and registration purposes.

Issued in Washington, DC, on April 13, 2016.

John S. Duncan,

Director, Flight Standards Service.

[FR Doc. 2016–09069 Filed 4–19–16; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0071]

Hours of Service of Drivers: McKee Foods Transportation LLC, Exemption; FAST Act Extension of Expiration Date

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; extension of exemption.

SUMMARY: FMCSA announces the extension of the exemption granted to McKee Foods Transportation, LLC, (MFT) on March 27, 2015, for transportation by their team drivers utilizing the sleeper-berth (S/B). The Agency extends the expiration date from March 27, 2015, to March 27, 2020, in response to Section 5206(b)(2)(A) of the "Fixing America's Surface Transportation Act" (FAST Act). That section extends the expiration date of hours-of-service (HOS) exemptions in effect on the date of enactment of the FAST Act to 5 years from the date of issuance of the exemptions. The MFT exemption from the Agency's S/B requirement is limited to team drivers employed by MFT to allow these drivers to split S/B time into two periods totaling at least 10 hours, provided neither of the two periods is less than 3 hours in length. The Agency previously determined that the commercial motor vehicle operations of MFT drivers under this exemption would likely achieve a level of safety equivalent to or greater than the level of safety that would be obtained in the absence of the exemption.

DATES: This limited exemption is effective from March 27, 2015, through March 27, 2020.

SUPPLEMENTARY INFORMATION:

Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** [49 CFR 381.315(a)].

Section 5206(b)(2)(A) of the FAST Act requires FMCSA to extend any exemption from any provision of the HOS regulations under 49 CFR part 395 that was in effect on the date of enactment of the Act to a period of 5 years from the date the exemption was granted. The exemption may be renewed. Because this action merely implements a statutory mandate that took effect on the date of enactment of the FAST Act, notice and comment are not required.

MFT Exemption

MFT, a private motor carrier, applied for an exemption to eliminate the requirement that S/B time include a period of at least 8 but less than 10 consecutive hours in the S/B and a separate period of at least 2 but less than 10 consecutive hours either in the S/B or off duty, or any combination thereof [49 CFR 395.1(g)(1)(ii)(A)(1)]. The exemption is limited to team drivers, and these team drivers are allowed to split S/B time into two periods totaling at least 10 hours, provided neither of the two periods is less than 3 hours in length.

FMCSA reviewed MFT's application and the public comments and concluded that granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation. A Notice of Final Determination granting the MFT exemption was published on March 27, 2015 [80 FR 16503].

The substance of the exemption is not affected by this extension. The exemption covers only the split S/B requirement [49 CFR 395.1(g)(1)(ii)(A)(1–2)]. The exemption is restricted to MFT team drivers, who utilize electronic logging devices to track records of duty status; have a minimum 26-hour off-duty period, at home, from Friday night to Saturday night; and are limited to 10 hours of driving following their required 10 consecutive hours off duty, or the S/B equivalent.

The FMCSA does not believe the safety record of any driver operating under this exemption will deteriorate. However, should deterioration in safety occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. The FMCSA has the authority to terminate the exemption at any time the Agency has the data/information to conclude that safety is being compromised.

Issued on: April 13, 2016.

T.F. Scott Darling, III,

Acting Administrator.

[FR Doc. 2016–09112 Filed 4–19–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0130]

Commercial Driver's License: Missouri Department of Revenue (DOR); Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from the Missouri Department of Revenue (DOR), Driver's License Bureau, for a limited exemption from the Agency's commercial driver's license (CDL) regulations. These regulations require a driver to pass the general knowledge test before being issued a Commercial Learner's Permit (CLP). The Missouri DOR requests an exemption from knowledge test requirement for qualified veterans who participated in dedicated training in approved military programs. The Missouri DOR states that its goal is to assist qualified veterans in obtaining employment when returning to the civilian workforce, and that granting this exemption will assist veterans who have already been through extensive military training. FMCSA requests public comment on the exemption application. In addition, because the issue raised by the Missouri DOR is not unique to that State, FMCSA requests public comment whether the exemption, if granted, should cover all State Driver's Licensing Agencies (SDLAs).

DATES: Comments must be received on or before May 20, 2016.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–

2016–0130 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* See the *Public Participation and Request for Comments* section below for further information.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *www.regulations.gov,* including any personal information included in a comment. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line FDMS is available 24 hours each day, 365 days each year.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–2718. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages you to participate by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2016–0130), indicate the specific section of this document to which the comment applies, and provide a reason for suggestions or recommendations. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission.

To submit your comment online, go to *www.regulations.gov* and put the docket number, "FMCSA–2016–0130" in the "Keyword" box, and click "Search." When the new screen appears, click on "Comment Now!" button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. FMCSA will consider all comments and material received during the comment period and may grant or not grant this application based on your comments.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Request for Exemption

The Missouri DOR requests an exemption from 49 CFR 383.71(a)(2)(ii), which requires any person applying for a Commercial Learner's Permit (CLP) on or after July 8, 2015, to have taken and passed a general knowledge test that meets the Federal standards in subparts F, G and H of part 383 for the commercial vehicle group that the applicant operates or expects to operate. The Missouri DOR requested an exemption from the knowledge test requirements for trained military truck drivers, in effect giving designated drivers credit for military training and experience.

The Missouri DOR provides a number of reasons for this request. It contends that qualified veterans who participated in the dedicated training in approved military programs have already received numerous hours of classroom training, practical skills training, and one-on-one road training that are essential for safe driving. Other reasons for the request include:

- The hours of training required by these military programs before certifying trainees to drive military vehicles is in excess of the minimum entry-level driver training required in FMCSA's proposed rulemaking, and is comparable to the skills needed to pass the American Association of Motor Vehicle Administrators (AAMVA) 2005 CDL Test Model. While the AAMVA test standard requires a passing score, the military programs offer training which is not deemed completed until all methods are applied in a practical sense;
- Veterans who participate in specialized military training are assigned duties where their driving skills are applied and used on a frequent basis and would be an asset in civilian life; and
- The trucking industry continually expresses the need for new drivers every year. Providing this incentive would assist in expediting the transition of fully trained military truck drivers to fill these jobs.

In addition, because the issue raised by the Missouri DOR is not unique to that State, FMCSA requests public comment on whether the exemption, if granted, should cover all State Driver's Licensing Agencies (SDLAs).

A copy of the Missouri DOR's application for exemption is available for review in the docket for this notice.

Issued on: April 13, 2016.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2016–09116 Filed 4–19–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0124]

Beyond Compliance Program

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; request for comment.

SUMMARY: The Fixing America's Surface Transportation (FAST) Act requires FMCSA to implement a "Beyond Compliance" program no later than 18 months after the enactment of the Act. Through this proposed program, the FMCSA Administrator must allow recognition, either through credit recognized by a new Beyond Compliance Behavior Analysis and Safety Improvement Category (BASIC), or an improved Safety Measurement System (SMS) percentile, for a motor carrier that: (1) Installs advanced safety equipment; (2) uses enhanced driver fitness measures; (3) adopts fleet safety management tools, technologies, and programs; or (4) satisfies other standards determined appropriate by the Administrator. The FAST Act also requires that the Agency provide the opportunity for notice and comment on a process for identifying and reviewing advanced safety equipment, enhanced driver fitness measures, fleet safety management tools, technologies, and programs, and other standards for use by motor carriers to receive recognition. This proposed program will not allow relief from regulatory requirements. This notice satisfies that requirement to seek comments on this program. Comments and data received in response to this notice will be used to further develop the Beyond Compliance program.

DATES: Comments must be received on or before June 20, 2016.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2015–0124 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Rowlett, 1200 New Jersey Avenue SE., Washington, DC 20590, Telephone (202) 366–6406, *theresa.rowlett@dot.gov.*

SUPPLEMENTARY INFORMATION:

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2015–0124), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* put the docket number, FMCSA–2015–0124, in the keyword box, and click "Search." When the new screen appears, click on the "Comment Now!" button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may draft an additional notice of program development based on your comments and other information and analysis.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2015–0124, in the keyword box, and click "Search." Next, click the "Open Docket Folder" button and choose the document to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its program policy development process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Background

Motor Carrier Safety Advisory Committee (MCSAC) Tasking

On March 30, 2015, FMCSA tasked the MCSAC with providing recommendations to the Agency on the potential benefits and feasibility of voluntary compliance and ways to credit carriers and drivers who initiate and establish programs that promote safety beyond the standards established in FMCSA regulations. The Agency specifically asked for the views of the MCSAC on this concept, with any data or analysis to support it with regard to three basic areas:

1. What voluntary technologies or safety program best practices would be appropriate for beyond compliance?
2. What type of incentives would encourage motor carriers to invest in technologies and best practices programs?
3. How would FMCSA verify the voluntary technologies or safety programs were being implemented?

The Agency received the MCSAC's letter report on September 21, 2015. The MCSAC noted that the ideas in the report were not based on a full discussion on the merits; rather, these ideas were suggested and supported by a variety of MCSAC members. It was the Committee's intention to provide FMCSA with a broad range of ideas that address the questions the Agency laid out in the Task Statement from the diverse group of stakeholders that constitute the MCSAC membership. Additionally, the MCSAC noted that the inclusion of ideas in this report was not based on a discussion of whether sufficient data exists to support the use of the relevant incentive or on cost/benefit considerations. A copy of the

Task Statement and the letter report are included in the docket for this program referenced above.

April 2015 ***Federal Register*** *Notice*

On April 17, 2015, FMCSA issued a Federal Register notice requesting comment for possible development of a Beyond Compliance program. FMCSA sought responses to the following specific questions and encourages the submission of any other reports or data on this issue.

1. What voluntary technologies or safety program best practices would be appropriate for a Beyond Compliance program?
2. What safety performance metrics should be used to evaluate the success of voluntarily implemented technologies or safety program best practices?
3. What incentives would encourage motor carriers to invest in technologies and best practices programs?
   a. Credit on appropriate SMS scores (*e.g.*, credit in Driver Fitness for use of an employer notification system)?
   b. Credit on ISS scores?
   c. Reduction in roadside inspection frequency?
   d. Other options?
4. What events should cause the incentives to be removed?
   a. If safety goals for the carrier are not consistently achieved, what is the benefit to the motoring public?
5. Should this program be developed by the private sector like PrePass, ISO 9000, or Canada's Partners in Compliance (PIC)?
6. How would FMCSA verify that the voluntary technologies or safety programs were being implemented?

Forty-four responsive comments were received. The majority of commenters supported the idea of a program that gave recognition for voluntarily exceeding the requirements. However, 13 commenters were vendors with products or programs that could receive additional sales as a result of this program.

The United Motorcoach Association (UMA), the Owner Operator and Independent Driver Association (OOIDA) and Dale Chandler indicated that they were opposed to a Beyond Compliance program. Reasons cited included concerns that this type of program would be biased against small motor carriers that could not afford the investment and that this program would take resources away from FMCSA's safety missions.

Fixing America's Surface Transportation (FAST) Act

In December 2015, Congress passed the Fixing America's Surface Transportation (FAST) Act (Pub. L. 114–94, 129 Stat. 1312 (Dec. 4, 2015)) which requires FMCSA to implement a "Beyond Compliance" program no later than 18 months after the enactment of the Act. Section 5222 specifically requires that FMCSA allow recognition, including credit or an improved SMS percentile, for a motor carrier that: (1) Installs advanced safety equipment; (2) uses enhanced driver fitness measures; (3) adopts fleet safety management tools, technologies, and programs; or (4) satisfies other standards determined appropriate by the Administrator.

This section of the FAST Act also prescribes that the Administrator must carry out the program by either incorporating a methodology into the Compliance, Safety, Accountability (CSA) program; or establishing a safety Behavior Analysis Safety Improvement Category (BASIC) in SMS.

In developing the Beyond Compliance program, the Agency must develop a process for identifying and reviewing advanced safety equipment, enhanced driver fitness measures, fleet safety management tools, technologies, and programs, and other standards for use by motor carriers to receive recognition, including credit or an improved SMS percentile. Section 5222 prescribes that this process must provide for a petition process for reviewing advanced safety equipment, enhanced driver fitness measures, fleet safety management tools, technologies, and programs, and other standards; and seek input and participation from industry stakeholders, including commercial motor vehicle drivers, technology manufacturers, vehicle manufacturers, motor carriers, law enforcement, safety advocates, and the MCSAC. As noted above, the MCSAC was already consulted on this program. This notice seeks comments from other noted parties.

In Section 5222(e) of the FAST Act, Congress provided the Administrator with the authority to monitor motor carriers that receive recognition through a no-cost contract. This means that the costs for monitoring this program would be charged to the motor carrier by the third party contractor. FMCSA is currently completing the acquisition planning process required to establish this no-cost contract.

FMCSA must maintain a publicly accessible Web site that provides information on—(1) the advanced safety equipment, enhanced driver fitness measures, fleet safety management tools, technologies, and programs eligible for recognition; (2) any petitions for review of advanced safety equipment, enhanced driver fitness measures, fleet safety management tools, technologies, and programs, and other standards; and (3) any relevant statistics relating to the use of advanced safety equipment, enhanced driver fitness measures, fleet safety management tools, technologies, and programs, and other standards.

Section 5222 of the FAST Act requires initiation of the Beyond Compliance Program within 18 months from the date of the Act, and section 5223 of the FAST Act prohibits the display of certain important safety information on the Agency's SMS Web site until the Beyond Compliance program is initiated. Once the program is initiated, and within 3 years after the date of enactment of the FAST Act, FMCSA must submit to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate a report on the number of motor carriers receiving recognition and the safety performance of such carriers.

Listening Sessions

On December 24, 2015 (80 FR 80447), FMCSA announced in the **Federal Register** that it would be holding two listening sessions on the Beyond Compliance program. The sessions were held on January 12 and 31, 2016, to solicit information on the potential benefits and feasibility of voluntary compliance and ways to credit carriers who initiate and establish programs that promote safety beyond the standards established in FMCSA regulations. The listening sessions were intended to provide interested parties with an opportunity to share their views on this topic with Agency representatives, along with any data or analysis they may have. All comments were transcribed and have been placed in the docket referenced above. This input was considered by FMCSA in developing the proposed program described below. Additional listening sessions are being planned for Louisville, KY, and Chicago, IL, on April 1 and 25, 2016, respectively. A separate notice will be published with the times and meeting locations for these listening sessions.

Proposed Program

Below is a description of FMCSA's proposal for the Beyond Compliance program. The Agency seeks comments and data that will support the development and implementation of this program.

Credit Through a Beyond Compliance BASIC

FMCSA proposes to create a new BASIC in SMS. The Beyond Compliance

BASIC would appear when a motor carrier is approved and participating in the Beyond Compliance program. The Agency proposes this means of acknowledging those programs that exceed regulatory requirements voluntarily for two reasons. First, many commenters to the April 2015 **Federal Register** notice advised that public recognition of participation in this program would provide value. Those companies with this BASIC would distinguish themselves from other companies when the public display of SMS is reinstated in the future. Second, developing and maintaining a separate BASIC in SMS can be completed within the 18 month timeframe prescribed by the FAST Act, whereas making modifications to the SMS methodology would be more complicated and time consuming, and potentially impact the study of the SMS methodology required by Section 5221 of the FAST Act. In addition, a separate BASIC is easier and more cost effective for the Agency to implement and maintain. This alternative allows FMCSA to only modify the SMS and does not need to tie to data in other systems such as the Motor Carrier Management Information System.

FMCSA is specifically seeking comments on this proposal, and the pros and cons of the Beyond Compliance BASIC.

Programs Meeting the Requirements of the Beyond Compliance Program

The FAST Act prescribes the eligibility for the Beyond Compliance program. As a result, this program is available to a motor carrier that: (1) Installs advanced safety equipment; (2) uses enhanced driver fitness measures; (3) adopts fleet safety management tools, technologies, and programs; or (4) satisfies other standards determined appropriate by the Administrator.

FMCSA proposes that technologies that are not currently mandatory, such as Electronic Logging Devices, would be eligible until they are required.

Eligibility

A motor carrier would be eligible to apply for the Beyond Compliance program if the following criteria were met:

1. The motor carrier did not have a Conditional or Unsatisfactory safety rating;
2. The motor carrier did not have any BASICs over intervention thresholds at the time of the application;
3. The proposed technology or program must be applied to the company's population of vehicles or drivers to adequately achieve the performance goal and improve safety;
4. The motor carrier must be an interstate carrier; and
5. The motor carrier must have graduated from the new entrant monitoring period.

Commenters supported establishing this program for companies that are already demonstrating compliance with the Agency's regulations. Specifically, John Boyle, of Boyle Brothers, Inc., noted that FMCSA "should focus on and reward real world results rather than who can attract technology partners or self-promote the best." The Commercial Vehicle Safety Alliance (CVSA) added, "The purpose of such a program is to recognize motor carriers who go above and beyond the minimum requirements. Releasing participating motor carriers from the minimum requirements is inappropriate and in direct conflict with the purpose of the program. CVSA strongly opposes any effort to do so." Advocates for Highway and Auto Safety noted that "Any program to support voluntary initiatives must, therefore, be predicated on adequate performance standards and documented safety improvement data that ensures the initiatives are actually contributing to highway safety." The Owners Operators and Independent Drivers Association opined that ". . . this proposal is largely being driven by technology firms whose primary interest is financial, and by large carriers who have already adopted technology but have not realized real improvement to their safety scores."

Petition Submission Process

FMCSA proposes that petitions for technologies and safety programs for consideration in a Beyond Compliance would be submitted using an on-line tool to be developed by FMCSA. The on-line petition process would require the motor carrier to provide at least the following information:

1. USDOT number;
2. Company name and doing business as (DBA) names
3. Company official name, title, contact info;
4. Proposed technology or program;
5. Coverage (drivers and/or fleet);
6. Baseline safety information;
7. Expected improvement;
8. Estimated cost;
9. Installation timeframe (past or future); and
10. Self-certification.

Baseline safety information would include a statement of the safety gains sought, defined with data. This must be a measurable performance data that can be monitored to determine if improvement has been made.

FMCSA specifically requests comments on other data that should be required with the application.

It is also anticipated that this online system would allow requestors to submit documentation in support of the request. Documentation to be submitted with a request would include, but is not limited to:

1. Vendor documentation;
2. Training materials;
3. Company policies;
4. Company monitoring plans; and
5. Other proof of implementation.

FMCSA specifically requests information on what documentation should be submitted with an application.

Petition Review Process

As noted above, the FAST Act allows FMCSA to award a no-cost contract to a third party to provide monitoring support for this program. It is expected that this third party would be used to interview applicants and complete validation of the application. The third-party would make recommendations to FMCSA on whether or not applications should be approved.

FMCSA would complete review of submitted petitions within 60 days. Applicants would receive a written decision by email. If the application is approved, the motor carrier would see the Beyond Compliance BASIC on its SMS profile. At this point in the process, SMS would show that the motor carrier is "Deployed."

If FMCSA does not agree that the application met the requirements of the program, a justification for this decision would be provided so that the motor carrier may adjust the application and resubmit.

Mandatory Use Period and Monitoring

Within approximately 6 months after the application is approved, the approved program or technology would be evaluated to identify the impacts on the baseline performance measures. This monitoring would be conducted by the third-party contractor. The use of the technology or safety program would be confirmed and if the safety baseline has improved, the Beyond Compliance BASIC would indicate that the motor carrier is "Improved."

Recurring Monitoring

Recurring monitoring would be conducted by the third party contractor. FMCSA proposes that use of the approved technology or safety program would be validated at least annually. The validation could occur through an on-site review, submission of documentation, self-certification, or another method of evaluation. FMCSA specifically requests comments on other means of validating the sustained use of the approved technology or safety programs.

Removal From the Program

A motor carrier would be immediately removed from the program if it received a final conditional or unsatisfactory safety rating; was declared an imminent hazard; or received an out of service or revocation order from FMCSA. Additionally, a motor carrier would be removed from the program immediately if it was determined that the approved technology or safety program was not being used or was being used by fewer drivers/vehicles than approved.

A motor carrier would be provided a warning if an alert(s) exceeded the intervention threshold or did not maintain performance above the performance baseline specified in its application. If the SMS measure or the performance did not improve within 6 months, the motor carrier would be removed from the program.

SMS Display

FMCSA will design the change to SMS to show a Beyond Compliance BASIC. Information on the Beyond Compliance BASIC detail page would explains that this BASIC exists for carriers that have applied to this program and been approved. The detail page would also include a brief explanation of the technology or program and would show if the program is "Deployed" or "Improved."

Cost

As noted above, FMCSA has the authority to contract for a no-cost contract to provide monitoring services for this program. This means that the costs of the work performed by this third party would be paid by the motor carrier. For the monitoring that would be conducted as part of the application process, FMCSA estimates that this would take, on average, five hours per carrier. However, it is acknowledged that some programs or technologies will requires significantly more resources to monitor. At a wage that is commensurate with a GS–13 Management Analyst in the Washington, DC, area, this would equate to $44.15 per hour or $220.

It is expected that the six month validation would be two hours, or $88, and the annual review would take two additional hours, or an additional $88 per year. Assuming a carrier is in the program for five years, FMCSA estimates that the fee would be approximately $750 per motor carrier. This would be the expected cost for a program implemented on a small number of vehicles and/or drivers. It is expected that the costs would be tiered so that larger programs requiring more monitoring would incur a higher cost. FMCSA specifically seeks data and cost information to determine the appropriate range of fees to be paid by the motor carrier under the no-cost contract.

Issued on: April 13, 2016.

T.F. Scott Darling, III,

Acting Administrator.

[FR Doc. 2016–09118 Filed 4–19–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0116]

Household Goods Consumer Protection Working Group: Membership Solicitation

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice, request for applications and nominations to the Household Goods Consumer Protection Working Group.

SUMMARY: FMCSA announces its intent to establish the Household Goods (HHG) Consumer Protection Working Group (Working Group). The Fixing America's Surface Transportation (FAST) Act requires FMCSA to establish this Working Group to provide recommendations on how to better educate and protect HHG moving customers (consumers) during an interstate HHG move. FMCSA solicits applications and nominations of interested persons to serve on the Working Group. As required by the FAST Act, the Working Group must be composed of individuals with expertise in consumer affairs, educators with expertise in how people learn most effectively, and representatives of the interstate HHG moving industry. The FAST Act mandates that the Working Group make its recommendations and the U.S. Department of Transportation (DOT) publish them no later than December 4, 2016.

DATES: Applications/Nominations for the Working Group must be received electronically on or before May 20, 2016.

FOR FURTHER INFORMATION CONTACT: Kenneth Rodgers, Chief, Commercial Enforcement and Investigations Division, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. Phone (202) 366–0073; Email *kenneth.rodgers@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FAST Act

Section 5503 of the FAST Act (Pub. L. 114–94) (December 4, 2015) requires the Working Group to provide recommendations to the Secretary of Transportation, through the FMCSA Administrator. The Working Group will operate in accordance with the Federal Advisory Committee Act (FACA, 5 U.S.C. App 2).

As required by Section 5503 of the FAST Act, the Working Group will make recommendations in three areas relating to "how to best convey to consumers relevant information with respect to the Federal laws concerning the interstate transportation of household goods by motor carrier." Those areas are:

1. How to condense the FMCSA "Ready to Move ?" moving tips document published in April 2006 (FMCSA–ESA–03–005) into a more consumer friendly format;
2. How best to use state-of-the-art education techniques and technologies for conveying relevant information with respect to Federal statutes and regulations concerning the interstate transportation of HHG (including how to optimize use of the Internet as an educational tool); and
3. How to reduce and simplify the paperwork required of motor carriers and shippers in interstate transportation.

Section 5503 also mandates that the Secretary of Transportation appoint a Working Group that is comprised of (i) individuals with expertise in consumer affairs; (ii) educators with expertise in how people learn most effectively; and (iii) representatives of the FMCSA regulated interstate HHG moving industry.

The working group will terminate one year after the date its recommendations are submitted to the Secretary of Transportation.

II. Member and Meeting Information

If members are appointed from the private sector, they will serve without pay, but the FMCSA Administrator may allow a member, when attending Working Group meetings (or sub-group meetings of such group), to be reimbursed for expenses authorized under Section 5703 of Title 5, United States Code and the Federal Travel

Regulation System (41 CFR Subtitle F), relating to per diem, travel, and transportation. Non-Federal employee Working Group members appointed as individuals with expertise in consumer affairs or as educators with expertise in how people learn most effectively also will be deemed Special Government Employees (SGEs), as defined by 18 U.S.C. 202(a). SGE status means Federal ethics rules apply, in part, to these non-Federal employee members and such members may be required to file confidential financial disclosure reports to detect and resolve any real or apparent financial conflicts of interest with the Working Group.

The Working Group members who are individuals with expertise in consumer affairs or who are educators with expertise in how people learn most effectively cannot be subject to the registration and reporting requirements of the Lobbying Disclosure Act (2 U.S.C. 1605). See 79 FR 47482 (Revised Guidance on Appointment of Lobbyists to Federal Advisory Committees, Boards, and Commissions)(August 13, 2014)).

The FMCSA Designated Federal Official who will oversee the Working Group anticipates calling a series of meetings on the following dates:

- May 24, 2016
- June 28, 2016
- July 26, 2016
- August 30, 2016
- September 27, 2016

Meetings will be in person and/or via teleconference. All meetings in furtherance of this FAST Act mandate will be open to the general public, unless cause exists (albeit unlikely) to close the meeting to the public under an exception provided under the FACA. Notice of each meeting will be published in the **Federal Register** at least 15 calendar days prior to the date of the meeting.

III. Request for Nominations

The DOT, through FMCSA, seeks applications and nominations for membership to the Working Group. Applicants or nominees must be either: (i) Individuals with expertise in consumer affairs; (ii) educators with expertise in how people learn most effectively; or (iii) representatives of the FMCSA-regulated interstate household goods moving industry. The DOT will consider professional credentials such as experience, education, and achievements. The Department also endeavors to appoint members of diverse views and interests to ensure the committee is balanced, with appropriate consideration of background.

Qualified individuals may self-apply or be nominated by any individual or organization. To be considered, applicants and nominators should submit the following information:

(1) Name, title, and relevant contact information (including phone and email address) and a description of the interests the applicant/nominee shall represent;

(2) Any letter(s) of support from an individual, a company, union, trade association, or non-profit organization on letterhead, containing a brief description why the applicant/nominee should be considered for membership;

(3) A resume or short biography of the applicant/nominee, including professional and academic credentials; and

(4) An affirmative statement that the applicant/nominee meets all Working Group eligibility requirements.

Please do not send company, trade association, or organization brochures or any other information. Should more information be needed, DOT staff will contact the applicant/nominee, obtain information from the applicant/nominee's past affiliations, or obtain information from publicly available sources, such as the Internet.

Nominations are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, marital status, or sexual orientation. To ensure that recommendations to the Secretary take into account the needs of the diverse groups served by DOT, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Applicants and nominators should submit the above information via electronic transmission to Kenneth Rodgers, FMCSA Office of Enforcement and Compliance, at *kenneth.rodgers@dot.gov.* The submission must be received on or before May 20, 2016.

Issued on: April 13, 2016.

T. F. Scott Darling, III,

Acting Administrator.

[FR Doc. 2016–09113 Filed 4–19–16; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. DOT–MARAD–2016–0039]

Agency Requests for Renewal of a Previously Approved Information Collection(s): Capital Construction Fund and Exhibits

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice and request for comments.

SUMMARY: The Maritime Administration (MARAD) invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collected information is necessary for MARAD to determine an applicant's eligibility to enter into a CCF Agreement. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995, Public Law 104–13.

DATES: Written comments should be submitted by June 20, 2016.

ADDRESSES: You may submit comments [identified by Docket No. DOT–MARAD–2016–0039] through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Daniel Ladd, 202–366–1859, Maritime Administration, Office of Financial Approvals, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590. Telephone: 202–366–2321 or E-MAIL: *lisa.simmons@marad.dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2133–0027.

Title: Capital Construction Fund and Exhibits.

Form Numbers: None.

Type of Review: Renewal of an information collection.

Background: This information collection consists of an application for a Capital Construction Fund (CCF) agreement under 46 U.S.C. Chapter 535 and annual submissions of appropriate schedules and exhibits. The Capital Construction Fund is a tax-deferred ship construction fund that was created to assist owners and operators of U.S.-flag vessels in accumulating the large amount of capital necessary for the modernization and expansion of the U.S. merchant marine. The program encourages construction, reconstruction, or acquisition of vessels through the deferment of Federal income taxes on certain deposits of money or other property placed into a CCF.

Respondents: U.S. citizens who own or lease one or more eligible vessels and who have a program to provide for the acquisition, construction or reconstruction of a qualified vessel.

Number of Respondents: 143.

Frequency: Annually.

Total Annual Burden: 1790 Hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:93.

Dated: April 4, 2016.

Gabriel Chavez,

Assistant Secretary, Maritime Administration.

[FR Doc. 2016–09047 Filed 4–19–16; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Funding Opportunity Title: Amended Notice of Allocation Availability (NOAA) for the Combined Calendar Year (CY) 2015—CY 2016 Allocation Round of the New Markets Tax Credit (NMTC) Program

Announcement Type: Change to NOAA for the Combined CY 2015–CY 2016 Allocation Round of the NMTC Program.

DATES: Electronic applications must have been received by 5:00 p.m. ET on December 16, 2015.

SUMMARY: This NOAA update is issued to combine calendar year (CY) 2015—CY 2016 tax credit allocation rounds of the NMTC Program, authorized by Title I, subtitle C, section 121 of the Community Renewal Tax Relief Act of 2000 (Pub. L. 106–554), as amended (the Act). On October 23, 2015, in the NOAA for the CY 2015 allocation round of the NMTC Program (the CY 2015 NOAA, 80 **Federal Register** 64495), the Community Development Financial Institutions Fund (the CDFI Fund) announced, among other things, that the CY 2015 NMTC allocation amount would be up to $5.0 billion, subject to Congressional authorization. In the NOAA for the CY 2015 allocation round the CDFI Fund also reserved the right to allocate amounts in excess of or less than the anticipated allocation amount of $5 billion. Pursuant to the passage of the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), the authorization for the NMTC Program has been extended for five calendar years (CY 2015 through CY 2019) with $3.5 billion in annual NMTC allocation authority. In order to make NMTC allocation awards in the respective calendar years as set forth in the PATH Act, the CDFI Fund hereby amends the CY 2015 NOAA to combine the CY 2015 and the CY 2016 NMTC authorities into one allocation round (herein referred to as the "combined CY 2015–2016 allocation round"). Accordingly, the NMTC allocation authority announced in this revised NOAA being made available in the combined CY 2015–2016 allocation round includes both the amount authorized for CY 2015 ($3.5 billion) and the amount authorized for CY 2016 ($3.5 billion), resulting in a total NMTC allocation amount of $7.0 billion for the combined CY 2015–2016 allocation round.

Combination of Allocation Authority: The CY 2015 NOAA announced an expected total of up to $5.0 billion of NMTC allocation authority available in the CY 2015 round, subject to Congressional authorization. The PATH Act authorized an annual allocation authority of $3.5 billion for five years (CY 2015 to CY 2019). In order to allocate NMTC authority during the calendar year for which it was authorized, the CY 2015 NOAA is hereby amended to include both CY 2015 ($3.5 billion) and CY $2016 ($3.5 billion), with a total of $7.0 billion in NMTC authority available in the combined CY 2015–2016 allocation round.

Allocation Amounts: The CY 2015 NOAA announced that the CDFI Fund, in its sole discretion, reserves the right to award tax credit allocation authority in amounts that are in excess of or less than the anticipated maximum allocation should the CDFI Fund deem it appropriate. The CDFI Fund continues to anticipate that it will not issue more than $125 million in tax credit investment authority per Allocatee. However, those determinations will be made on a case-by-case basis and in the sole discretion of the CDFI Fund. The CDFI Fund continues to reserve the right to allocate NMTC authority to any, all, or none of the entities that submitted applications in response to this NOAA, and in any amount it deems appropriate.

All other information and requirements set forth in the CY 2015 NOAA shall remain effective, as published.

Authority: 26 U.S.C. 45D; 31 U.S.C. 321; 26 CFR 1.45D–1; Pub. L. 111–5.

Mary Ann Donovan,

Director, Community Development Financial Institutions Fund.

[FR Doc. 2016–09102 Filed 4–19–16; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease of Department of Veterans Affairs Real Property for the Development of Affordable Housing Facility in Minneapolis, Minnesota

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent to enter into an Enhanced-Use Lease.

SUMMARY: The Secretary of Veterans Affairs intends to enter into an Enhanced-Use Lease (EUL) on approximately 3 acres of land for the purpose of developing 100 units of affordable housing for Veterans. The EUL lessee, CHDC Veterans Limited Partnership, will finance, design, develop, manage, maintain, and operate housing for eligible homeless Veterans, or Veterans at risk of homelessness, on a priority placement basis, and provide services that guide resident Veterans toward attaining long-term self-sufficiency.

FOR FURTHER INFORMATION CONTACT: Edward L. Bradley III, Office of Asset Enterprise Management (044), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–7778.

SUPPLEMENTARY INFORMATION: Title 38 U.S.C. 8161 *et seq.* states that the Secretary may enter into an EUL if he determines that at least part of the use of the property will provide appropriate space for an activity contributing to VA's mission, the lease will not be inconsistent with and will not adversely affect VA's mission, and the lease will enhance the use of the property. This project meets these requirements.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Robert D. Snyder, Chief of Staff, approved this document on April 15, 2016, for publication.

Approved: April 15, 2016.

Michael Shores,

Office of Regulation Policy and Management, Office of the General Counsel.

[FR Doc. 2016–09153 Filed 4–19–16; 8:45 am]

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Part II

Federal Communications Commission

47 CFR Part 64
Protecting the Privacy of Customers of Broadband and Other Telecommunications Services; Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 16–106; FCC 16–39]

Protecting the Privacy of Customers of Broadband and Other Telecommunications Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission initiates a rulemaking seeking public comment on how to apply the privacy requirements of the Communications Act to broadband Internet access service (BIAS). This Notice of Proposed Rulemaking (NPRM) focuses on transparency, choice, and data security, in a manner that is consistent with the Commission's history of protecting privacy, the Federal Trade Commission's leadership, and various sector-specific statutory approaches, tailored to the particular circumstances that consumers face when they use broadband networks and with an understanding of the particular nature and technologies underlying those networks. The NPRM would recognize that consumers cannot give their permission for the use of protected data unless relevant broadband provider practices are transparent. The NPRM proposes a framework to ensure that consumers; understand what data the broadband provider is collecting and what it does with that information; can decide how their information is used; and are protected against the unauthorized disclosure of their information. The NPRM also seeks comment on a number of closely-related questions.

DATES: Submit comments on or before May 27, 2016. Submit reply comments on or before June 27, 2016. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before June 20, 2016.

ADDRESSES: You may submit comments, identified by WC Docket No. 16–106, by any of the following methods:

- *Federal Communications Commission's Web site: http://apps.fcc.gov/ecfs/.* Follow the instructions for submitting comments.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. In addition to filing comments with the Secretary, a copy of any comments on the Paperwork Reduction Act information collection requirements contained herein should be submitted to the Federal Communications Commission via email to *PRA@fcc.gov* and to Nicole Ongele, Federal Communications Commission, via email to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For further information about this proceeding, please contact Sherwin Siy, FCC Wireline Competition Bureau, Competition Policy Division, Room 5–C225, 445 12th St. SW., Washington, DC 20554, (202) 418–2783, *sherwin.siy@fcc.gov.* For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to *PRA@fcc.gov* or contact Nicole Ongele at (202) 418–2991.

SUPPLEMENTARY INFORMATION: Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998), *http://www.fcc.gov/Bureaus/OGC/Orders/1998/fcc98056.pdf.*

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://apps.fcc.gov/ecfs/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW., Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Synopsis

In this Notice of Proposed Rulemaking (NPRM), we propose to apply the privacy requirements of the Communications Act to broadband Internet access service (BIAS) and seek comment on how best to protect the privacy of the personal information of BIAS customers.

I. Introduction

1. The intersection of privacy and technology is not new. In 1890, Samuel Warren and Louis Brandeis inaugurated the modern age of privacy protection when they warned that "numerous mechanical devices threaten to make good the prediction that 'what is whispered in the closet should be proclaimed from the house-tops.'" The new technology they had in mind? The portable camera.

2. In this Notice of Proposed Rulemaking (NPRM or Notice), we propose to apply the traditional privacy requirements of the Communications Act to the most significant communications technology of today: Broadband Internet access service (BIAS). This is important because both consumers and Internet Service Providers (ISPs) would benefit from additional, concrete guidance explaining the privacy responsibilities created by the Communications Act. To that end, our approach can be simply stated: *First,* consumers must be able to protect their privacy, which requires transparency, choice, and data security. *Second,* ISPs are the most important and extensive conduits of consumer information and thus have access to very sensitive and very personal information that could threaten a person's financial security, reveal

embarrassing or even harmful details of medical history, or disclose to prying eyes the intimate details of interests, physical presence, or fears. But, *third,* the current federal privacy regime, including the important leadership of the Federal Trade Commission (FTC) and the Administration efforts to protect consumer privacy, does not now comprehensively apply the traditional principles of privacy protection to these 21st Century telecommunications services provided by broadband networks. That is a gap that must be closed, and this NPRM proposes a way to do so by securing what Congress has commanded—the ability of every telecommunications user to protect his or her privacy.

3. Privacy protects important personal interests. Not just freedom from identity theft, financial loss, or other economic harms but also from concerns that intimate, personal details could become grist for the mills of public embarrassment or harassment or the basis for opaque, but harmful judgments, including discrimination. The power of modern broadband networks is that they allow consumers to reach from their homes (or cars or sidewalks) to the whole wide world instantaneously. The accompanying concern is that those broadband networks can now follow the activities of every subscriber who surfs the web, sends an email or text, or even walks down a street carrying a mobile device. Absent legally-binding principles, those networks have the commercial motivation to use and share extensive and personal information about their customers. The protection of privacy thus both protects individuals and encourages use of broadband networks, by building trust.

4. Today, as the FTC has explained, ISPs are "in a position to develop highly detailed and comprehensive profiles of their customers—and to do so in a manner that may be completely invisible." This is particularly true because a consumer, once signed up for a broadband service, simply cannot avoid that network in the same manner as a consumer can instantaneously (and without penalty) switch search engines (including to ones that provide extra privacy protections), surf among competing Web sites, and select among diverse applications. Indeed, the whole purpose of the customer-provider relationship is that the network becomes an essential means of communications with destinations chosen by the customer; which means that, absent use of encryption, the broadband network has the technical capacity to monitor traffic transmitted between the consumer and each destination, including its content. Although the ability to monitor such traffic is not limitless, it is ubiquitous. Even when traffic is encrypted, the provider has access to, for example, what Web sites a customer has visited, how long and during what hours of the day the customer visited various Web sites, the customer's location, and what mobile device the customer used to access those Web sites. Providers of BIAS ("broadband providers") thus have the ability to capture a breadth of data that an individual streaming video provider, search engine or even e-commerce site simply does not. And they have control of a great deal of data that must be protected against data breaches. To those who say that broadband providers and edge providers must be treated the same, this NPRM proposes rules that recognize that broadband networks are not, in fact, the same as edge providers in all relevant respects. But this NPRM looks to learnings from the FTC and other privacy regimes to provide complementary guidance.

5. The core privacy principles—transparency, choice, and security—underlie the critical steps that the federal government has taken to protect the privacy of many specific forms of data. Indeed, these three principles are the heart of the internationally recognized Fair Information Practices Principles (FIPPs) that have informed our nation's thinking on privacy best practices while providing the framework for most of our federal privacy statutes.

6. Today, the Commission is empowered to protect the private information collected by telecommunications, cable, and satellite companies in Sections 222, 631, and 338 of the Communications Act and the Commission has recognized the importance of longstanding privacy principles in adopting and refining its existing Section 222 rules and enforcing privacy requirements. Thus, from the outset of its implementation of Section 222, the Commission has focused on ensuring that consumers have the tools to give their approval for the use and sharing of protected information.

7. Meanwhile, as consumer use of the Internet exploded, the FTC, using its authority to prohibit "unfair or deceptive acts or practices in or affecting commerce," entered into a series of precedent-setting consent orders addressing privacy practices on the Internet. Taken together, the FTC's online privacy cases focus on the importance of transparency; honoring consumers' expectations about the use of their personal information and the choices they have made about sharing that information; and the obligation of companies that collect personal information to adopt reasonable data security practices. Although the application of Section 222 to BIAS has implications for the jurisdiction of the FTC, that agency's leadership is critically important in this sphere and the Commission is determined to continue its close working relationship with the FTC. Most recently, the two agencies entered into a consumer protection Memorandum of Understanding (MOU). In the MOU each agency recognizes the others' expertise and we each agreed to coordinate and consult on areas of mutual interest.

8. This NPRM supports the ability of broadband networks to be able to provide personalized services, including advertising, to consumers—while reaping the financial rewards therefrom. For example, many consumers want targeted advertising that provides very useful information in a timely (sometimes immediate) manner. Nothing in this NPRM stops consumers from receiving targeted recommendations—or any other form of content they wish to consume. But well-functioning commercial marketplaces rest on informed consent. Permission is required before purchasers can be said to agree to buy a product; permission is needed before owners of property transfer their interests in that property. This NPRM embraces the basic economic principle that informed choice is necessary to protect the fundamental interest in privacy. Thus, the consumer who possesses private information must provide the broadband provider advanced approval for the use of that data. In many instances, that approval is inherent in the use of the broadband Internet access service (for example, the routing of communications to or from the consumer), but where it is not, this NPRM proposes that separate consent must be obtained. This is good for consumers and it is good business, as the success of opt-in provisions in other contexts demonstrates.

9. In the *2015 Open Internet Order,* we concluded that Section 222 should be applied to the broadband connections consumers use to reach the Internet, the newly-reclassified Title II service defined as "Broadband Internet Access Service" (BIAS). Section 222 is a sector-specific statute that includes detailed requirements that Congress requires be applied to the provision of telecommunications services, but not to the provision of other services by broadband providers nor to information providers at the edge of the network.

Thus, this NPRM applies existing statutory authority solely to the existing class of services that Congress included within the scope of Title II, namely the delivery of telecommunications services.

II. Ensuring Privacy Protections for Customers of Broadband Services

A. Defining Key Terms

10. To provide guidance to both broadband providers and customers regarding the scope of the privacy protections we propose today, in this section we propose to define the entities to which our rules apply and the scope of information covered by such rules. We also propose to define other key terms, including what constitutes "opt-out" and "opt-in" for purposes of giving customers control over the use of their confidential information, what constitutes aggregate customer proprietary information, and what constitutes a "breach" for purposes of our proposed data security and data breach notification rules. Finally, we seek comment on whether and how we should modify any of the current Section 222 definitions, either to update those definitions or harmonize them with the rules we propose to adopt with respect to BIAS providers. We recognize there will be an interplay between commenters' proposals about what substantive rules we should adopt to protect BIAS customers' privacy interests and how we should define key terms and we invite commenters to explore in detail the relationships between the two.

1. Defining BIAS and BIAS Provider

11. We propose to apply the definition of "Broadband Internet Access Services" or "BIAS" that we used in the *2015 Open Internet Order.* In that proceeding, we defined BIAS to mean "[a] mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service. This term also encompasses any service that the Commission finds to be providing a functional equivalent of the service described in the previous sentence, or that is used to evade the protections set forth in this part." We propose to define "broadband Internet access service provider" (BIAS provider) as a person or entity engaged in the provision of BIAS.

2. Defining Affiliate

12. We seek comment on how we should define "affiliate" for purposes of our proposed rules. The Act, as amended, and our current rules, define "affiliate" to mean "a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, another person," where the term "own" is defined to mean "to own an equity interest (or the equivalent thereof) of more than 10 percent." We seek comment on whether we should adopt this definition or another definition for purposes of our proposed rules, as well as any associated benefits and burdens, particularly for small providers.

3. Defining Customer

13. We propose to define "customer" to mean (1) a current or former, paying or non-paying subscriber to broadband Internet access service; and (2) an applicant for broadband Internet access service. We seek comment on our proposal and on whether we should harmonize the existing Section 222 definition of customer with our proposed broadband definition.

14. Under our current Section 222 rules, "[a] customer of a telecommunications carrier is a person or entity to which the telecommunications carrier is currently providing service." We believe that the existing rule's limitation to current subscribers is insufficiently narrow, perhaps particularly as applied to the broadband context. As technological capabilities have progressed, data retention and processing have increased, concomitantly increasing the incentives for retaining, using, and selling personal information of applicants and of former customers. Because BIAS providers have the ability to retain and reuse applicant and former customer proprietary information long after the application process is over, or the former customer has discontinued its subscription, we propose to define customer for BIAS purposes to include both applicants for BIAS and former BIAS customers. We recognize that not all aspects of our proposed rules will be applicable to all such customers in every situation (*e.g.,* a data breach may impact some customers but not others). For the purposes of these proposed rules we sometimes refer to "affected customers" or "existing customers" to designate a subset of customers, as appropriate.

15. In seeking comment on our proposed definition of "customer" we inquire as to whether, without the privacy protections of Section 222, consumers may be hesitant to apply for BIAS or current BIAS users may be apprehensive about switching service providers out of concern that their current provider may stop protecting their privacy after they switch providers. Could such apprehension inhibit competition and innovation in the BIAS marketplace?

16. We recognize that a single BIAS subscription is often used by multiple people. Residential fixed broadband services typically have a single subscriber, but are used by all members of a household, and often by their visitors. Some mobile BIAS providers offer friends and family plans in which multiple people are enrolled on one BIAS account, each with their own identified device(s) or user login. Should the definition of customer reflect the possibility of multiple broadband users? Should each member of a group plan or each user with a login be treated as a distinct customer who must receive individualized notices and consent requests? Is such a definition of "customer" appropriately consistent with the definition of "end user" adopted in the *2015 Open Internet Order*? Under such an interpretation, how would or should BIAS providers treat members of a group plan who are minors or are otherwise unable to understand notice and consent? How can we ensure that BIAS providers protect the information of all users of broadband Internet access service, given that the contract is between the BIAS provider and its subscriber? Should we define "subscriber" as any person about whom broadband providers hold customer information? How should we treat the interests of persons using corporate accounts, for example, including the employees of a small business? We seek comment on these issues and the benefits and burdens of any proffered alternatives.

17. At the same time, we are cognizant of the potential burdens that defining the term "customer" too broadly could place on BIAS providers, and we believe that the definition we propose today strikes the right balance between minimizing the burdens on BIAS providers and protecting customer proprietary information. We believe that our proposed definition will minimize the burden on BIAS providers by limiting the proposed notice and consent requirements to interactions with a single account holder, as opposed to every individual who connects to a broadband service over that subscription. Do commenters agree? We seek comment on the benefits and burdens associated with our proposed definition, and any alternatives,

including, in particular, burdens on small providers.

18. We also seek comment on whether we should revise the definition of "customer" in the existing CPNI rules to be consistent with our proposed definition of "customer" in the BIAS context. At least some of the concerns we identified above in regard to BIAS customers are not unique to BIAS; voice customers in today's world of big data face similar issues related to the protection of their own private information when they apply for and after they have terminated service. Given these concerns, we seek comment whether we should harmonize the definition of "customer" across voice and broadband platforms for purposes of protecting customer privacy.

19. Finally, to the extent we adopt rules that harmonize the privacy requirements under section 222 with the requirements for cable and satellite providers under Sections 631 and 338(i), should we understand the term "subscriber" in those provisions of the Act to be coextensive with the term "customer" we propose here?

4. Defining CPNI in the Broadband Context

20. As with the existing CPNI rules, we propose to adopt the statutory definition of CPNI for use in the broadband context. Section 222(h)(1) defines CPNI to mean "information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship" and "information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer or a carrier," except that CPNI "does not include subscriber list information." We seek comment on this proposal. Is there any need to include the second part of that definition in our rules regarding BIAS services, given its applicability only to telephone exchange service and telephone toll service?

21. We propose to interpret the phrase "made available to the carrier by the customer solely by virtue of the carrier-customer relationship" in the definition of CPNI to include any information falling within a CPNI category, as discussed below, that the BIAS provider collects or accesses in connection with the provision of BIAS. Consistent with the Commission's *2013 CPNI Declaratory Ruling*, this includes information that a BIAS provider causes to be collected and stored on customer premises equipment (CPE) or other devices, including mobile devices, in order to allow the carrier to collect or access the information. As the Commission held, the "fact that CPNI is on a device and has not yet been transmitted to the carrier's own servers also does not remove the data from the definition of CPNI, if the collection has been done at the carrier's direction." We also recognize that a BIAS provider has the ability to create and append CPNI to a customer's Internet traffic, such as by inserting a user ID header (UIDH). We interpret any information the BIAS provider attaches to a customer's Internet traffic to be CPNI if it falls within one of the categories delineated in Section 222(h)(1)(A). We seek comment on our approach.

22. In order to provide guidance to consumers and to BIAS providers, we propose to provide specific examples of the types of information that we consider CPNI in the broadband context. In the context of the existing CPNI rules, the Commission has explicitly declined to set out a comprehensive list of data elements that do or do not satisfy the statutory definition of CPNI, and we propose to continue to follow that model in the broadband context. The Commission has, however, enumerated certain data elements that it considers to be CPNI—including call detail records (including caller and recipient phone numbers, and the frequency, duration, and timing of calls) and any services purchased by the consumer, such as call waiting—and we propose to delineate similar non-exhaustive examples of the types of information that we would consider to constitute CPNI in the broadband context. We believe that such guidance will help provide direction regarding the scope of broadband providers' obligations and help to increase consumers' confidence in the security of their confidential information as technology continues to advance. We seek comment on this approach, alternatives, and any associated benefits and burdens, particularly for small providers.

a. Types of Information That Meet the Statutory Definition of CPNI

23. We propose that, at a minimum, we consider the following types of information to constitute CPNI in the broadband context: (1) Service plan information, including type of service (*e.g.*, cable, fiber, or mobile), service tier (*e.g.*, speed), pricing, and capacity (*e.g.*, information pertaining to data caps); (2) geo-location; (3) media access control (MAC) addresses and other device identifiers; (4) source and destination Internet Protocol (IP) addresses and domain name information; and (5) traffic statistics. Below we offer explanations for why we consider each of these type of data to fall within our proposed definition of CPNI with respect to BIAS. We seek comment on our proposed interpretations. We ask that commenters explain their responses to our proposed interpretations and identify any other element of the definition of CPNI which commenters believe covers any of the specific data elements described below.

24. *Broadband Service Plans.* We propose to consider information related to a customer's broadband service plan as CPNI in the broadband context. Broadband service plans are analogous to voice telephony service plans, which the Commission has long considered to be CPNI under the existing CPNI rules. We believe that information related to the telecommunications services the BIAS provider provides to the customer, including type of service (*e.g.*, fixed or mobile; cable or fiber; prepaid or term contract), speed, pricing, and capacity (including information pertaining to data caps) is information relating to the "quantity," "technical configuration," "type," and "amount of use" of a telecommunications service subscribed to by a customer. We seek comment on this proposed interpretation. Are there other data elements that are analogous to those included in a voice telephony service plan that we should consider CPNI in the broadband context?

25. *Geo-Location.* We propose to consider information related to the physical or geographical location of a customer or the customer's device(s) (geo-location), regardless of the particular technological method a BIAS provider uses to obtain this information, to be CPNI in the broadband context. The statutory definition of CPNI includes information related to "location" of a telecommunications services subscribed to by a customer. The Commission has held that "[t]he location of a customer's use of a telecommunications service also clearly qualifies as CPNI." We seek comment on this proposed interpretation.

26. *Media Access Control (MAC) Addresses and Other Device Identifiers.* We propose to consider any MAC address associated with a customer's device to be CPNI in the broadband context. A MAC address uniquely identifies the network interface on a device, and thus uniquely identifies the device itself (including the device manufacturer and often the model); as such, we believe it is analogous to the IMEI mobile device identifier in the

voice telephony context. Because BIAS providers use MAC addresses to route data packets to the end user, we believe that we should consider such information "destination" and "technical configuration" information under Section 222(h)(1)(A). Similarly, we propose to consider other device identifiers and other information in link layer protocol headers to be CPNI in the broadband context. We seek comment on our proposed interpretation. We also seek comment on other types of device identifiers that meet the statutory definition of CPNI. For example, our TRS rules recognize that a unique device identifier such as an "electronic serial number" is "call data information" in the TRS CPNI context.

27. *Internet Protocol (IP) Addresses and Domain Name Information.* We propose to consider both source and destination IP addresses as CPNI in the broadband context. An IP address is the routable address for each device on an IP network, and BIAS providers use the end user's and edge provider's IP addresses to route data traffic between them. As such, IP addresses are roughly analogous to telephone numbers in the voice telephony context, and the Commission has previously held telephone numbers dialed to be CPNI. Further, our CPNI rules for TRS providers recognize IP addresses as call data information. IP addresses are also frequently used in geo-location. As such, we believe that we should consider IP addresses to be "destination" and "location" information under Section 222(h)(1)(A). Similarly, we propose to consider other information in Internet layer protocol headers to be CPNI in the broadband context, because they may indicate the "type" and "amount of use" of a telecommunication service. We seek comment on this proposed interpretation.

28. Similarly, we propose to consider the domain names with which an end user communicates CPNI in the broadband context. Domain names (*e.g.*, "*www.fcc.gov*") are common monikers that the end user uses to identify the endpoint to which they seek to connect. Domain names also translate into IP addresses, which we propose to consider CPNI. We therefore propose to treat domain names as destination and location information. We seek comment on this proposed interpretation.

29. *Traffic Statistics.* We propose to consider traffic statistics to be CPNI pertaining to the "type" and "amount of use" of a telecommunications service. We believe that "amount of use" encompasses quantifications of communications traffic, including short-term measurements (*e.g.*, packet sizes and spacing) and long-term measurements (*e.g.*, monthly data consumption, average speed, or frequency of contact with particular domains and IP addresses). We recognize that modern technology enables easily collecting and analyzing traffic statistics to draw powerful inferences that implicate customer privacy. For example, a BIAS provider could deduce the type of application (*e.g.*, VoIP or web browsing) that a customer is using, and thus the purpose of the communication. Further, traffic statistics can be used to determine the date, time, and duration of use, and deduce usage patterns such as when the customer is at home, at work, or elsewhere. We believe traffic statistics are analogous to call detail information regarding the "duration[] and timing of [phone] calls" and aggregate minutes in the voice telephony context. We seek comment on our proposed interpretation.

b. Other Broadband Data Elements That Could Meet the Statutory Definition of CPNI

30. We also seek comment on whether we should consider other types of information to fall within the statutory definition of CPNI in the broadband context, including: (1) Port information; (2) application headers; (3) application usage; and (4) CPE information.

31. *Port Information.* We seek comment on whether we should consider port information to be "technical configuration," "type," "destination" information, and/or any other category of CPNI under Section 222(h)(1)(A). A port is a logical endpoint of communication with the sender or receiver's application. The destination port number determines which application receives the communication. We believe that port destinations are analogous to telephone extensions in the voice context. Port numbers identify or at least provide a strong indication of the type of application used, and thus the purpose of the communication, such as email or web browsing. We understand that BIAS providers sometimes configure their networks using port information for network management purposes, such as to block certain ports to ensure network security. We seek comment on whether we should consider port numbers and other information regarding port usage CPNI in the broadband context. Similarly, we seek comment on whether we should consider other information in transport layer protocol headers to be CPNI in the broadband context, for instance because it may be information that relates to the "technical configuration" or "amount of use" of a telecommunications service.

32. *Application Header.* We seek comment on whether we should consider application headers "technical configuration," "type," and/or "destination" information, or any other category of CPNI under Section 222(h)(1)(A). Application headers are application-specific data that assist with or otherwise relate to requesting and conveying application-specific content. The application header communicates information between the application on the end user's device and the corresponding application at the other endpoint(s) with which the user communicates. For example, application headers for web browsing typically contain the Uniform Resource Locator (URL), operating system, and web browser; application headers for email typically contain the source and destination email addresses. The type of applications used, the URLs requested, and the email destination all convey information intended for use by the edge provider to render its service. We understand that BIAS providers sometimes configure their networks using application headers for network management purposes. We believe that access to application headers is analogous in the voice telephony context to accessing a customer's choices within telephone menus used to route calls within an organization (*e.g.*, "Push 1 for sales. Push 2 for billing."). We seek comment on whether we should consider application headers CPNI in the broadband context. Similarly, we seek comment on whether we should consider any other application layer information to be CPNI in the broadband context.

33. *Application Usage.* We seek comment whether and under what circumstances we should consider information the broadband provider collects about the use of applications to meet the statutory definition of CPNI. As the Commission discussed in the *2013 CPNI Declaratory Ruling,* if such information meets the terms of Section 222(h)(1)(A) and the broadband provider directs the collection or storage of the information, it is CPNI. Based on this clarification, should we conclude that information the broadband provider collects about the usage of applications is CPNI in the broadband context, if the broadband provider directs such collection and the information collected falls within the statutory elements of CPNI? Based on the principles discussed in the *2013 CPNI Declaratory Ruling,* could application usage that

does not result in transmission also qualify as CPNI?

34. *Customer Premises Equipment (CPE) Information.* We seek comment whether we should consider information regarding CPE as "relat[ing] to the . . . technical configuration" and/or "type . . . of use of a telecommunication service," or any other category under the statutory definition of CPNI. CPE is defined in the Act as "equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications." In the broadband context, we believe CPE would include, but not be limited to, a customer's smartphone, tablet, computer, modem, router, videophone, or IP caption phone. The nature of a customer's device may impact the technical configuration of the broadband service based on the communications protocol that the device uses and may also identify the type of service to which the customer subscribes (*e.g.,* fixed vs. mobile, cable vs. fiber). We seek comment whether we should consider CPE information CPNI in the broadband context.

35. *Other.* We seek comment on what other customer information there is to which a BIAS provider has access by virtue of its provision of BIAS, whether such information should appropriately be considered CPNI, and why. We also seek comment on whether we should include any additional information in the definition of CPNI in the mobile context. If we find that any of the information discussed in this section is not CPNI, we seek comment on whether and how it should be protected.

36. We also seek comment on whether we should consider adopting a broader definition of CPNI and include additional categories of customer information into CPNI. If so, what should that definition be and what should it include? Is adopting a broader definition of CPNI the best way to provide consumers with robust privacy protections? What are the benefits and drawbacks to adopting a broader definition of CPNI?

37. Finally, we seek comment on any other issues we should address in conjunction with the definition of CPNI, as well as the benefits and burdens associated with any proposals to remedy those concerns, and in particular any associated benefits and burdens for small providers.

5. Defining Customer Proprietary Information

38. Section 222(a) imposes a general duty on telecommunications carriers "to protect the confidentiality of proprietary information of, and relating to . . . customers." Although the Commission's previous rulemakings addressing Section 222 have been limited to CPNI, subsection (a) by its terms does not appear to be limited to protecting customer information defined as CPNI. In its initial Section 222 rulemaking, the Commission limited itself to adopting rules implementing the CPNI requirements of Sections 222(c)–(f) in response to a petition from local exchange carrier associations. More recently, however, the Commission recognized the obligation of providers to protect the confidentiality of customer proprietary information pursuant to Section 222(a) in the enforcement context. In the *TerraCom NAL* we interpreted customer "proprietary information" as "clearly encompassing private information that customers have an interest in protecting from public exposure," including, but not limited to, "privileged information, trade secrets, and personally identifiable information." We explained that, in the context of Section 222, "it is clear that Congress used the term 'proprietary information' broadly to encompass all types of information that should not be exposed widely to the public, whether because that information is sensitive for economic reasons or for reasons of personal privacy."

39. In keeping with that interpretation of Section 222(a), we propose to define "proprietary information of, and relating to . . . customers" to include private information that customers have an interest in protecting from public disclosure, and consider such information to fall into two categories: (1) Customer proprietary network information (CPNI); and (2) personally identifiable information (PII) the BIAS provider acquires in connection with its provision of BIAS. We refer to these two categories of data together as "customer proprietary information" or "customer PI." We believe Section 222(a) protects CPNI because customer proprietary network information is a specific subtype of customer proprietary information generally. As described in more detail below, consistent with well-developed concepts of what constitutes personally identifiable information in the modern world, we propose to define PII to mean any information that is linked or linkable to an individual. Protecting personally identifiable information from breaches of confidentiality is a core value of most privacy regimes. We seek comment on our proposal.

40. Providing protection for PII as well as CPNI will benefit consumers, while having limited adverse impacts on BIAS providers, as both are types of information that customers reasonably expect their BIAS provider to keep secure and confidential. We expect that, for the most part, broadband providers already keep such information secure and treat it with some degree of confidentiality based on, among other things, FTC guidance that BIAS providers would have reasonably understood applied to them prior to the reclassification of broadband in the *2015 Open Internet Order.* We seek comment on whether there are other categories of information that should be treated as falling under Section 222(a) in the broadband context, and for which customers and providers expect protection. Are there any categories of information that are specific to the mobile BIAS context?

41. We also seek comment on whether we should harmonize the existing CPNI rules with our proposed rules for broadband providers by adopting one unified definition of customer PI, and on the benefits and burdens of such an approach. We recognize that because the Commission has not previously focused its attention on adopting rules defining the scope of information protected by Section 222(a), our existing Section 222 rules do not separately define customer PI. Are voice telecommunications providers' obligations to protect customer PI sufficiently clear, or would it be helpful to have a codified definition? Further, we observe that many telecommunications carriers also provide both voice and broadband services. Would a harmonized standard help reduce burdens for such companies, especially for small providers?

6. Defining Personally Identifiable Information

42. Protecting personally identifiable information is at the heart of most privacy regimes. We propose to define personally identifiable information, or PII, as any information that is linked or linkable to an individual. We recognize that, historically, legal definitions of PII adopted different approaches. Some incorporated checklists of specific types of information; others deferred to auditing controls. Advances in computer science, however, have demonstrated that seemingly anonymous information can often (and easily) be re-associated with identified individuals. Our proposal incorporates this modern understanding of data privacy, which is reflected in our recent enforcement actions, and tracks the FTC and National Institute of Standards and Technology (NIST) guidelines on PII. We propose to define PII broadly because of both the interrelated nature

of different types of personal information and the large risks posed by unauthorized uses and disclosures. We seek comment on our proposal.

43. *Linked and linkable information.* We propose that information is "linked" or "linkable" to an individual if it can be used on its own, in context, or in combination to identify an individual or to logically associate with other information about a specific individual. The "linked or linkable" standard for determining the metes and bounds of personally identifiable information is well established. In addition to NIST and the FTC, the Department of Education, the Securities and Exchange Commission, the Department of Defense, the Department of Homeland Security, the Department of Health and Human Services, and the Office of Management and Budget all use a version of this standard in their regulations. We seek comment on our approach.

44. We propose to offer illustrative, non-exhaustive guidance regarding the types of data that are PII. In order to provide such guidance, we look to a number of sources, including our prior orders, NIST, the FTC, the White House's proposed Consumer Privacy Bill of Rights, and other federal and state statutes and regulations. We propose that types of PII include, but are not limited to: Name; Social Security number; date and place of birth; mother's maiden name; unique government identification numbers (*e.g.*, driver's license, passport, taxpayer identification); physical address; email address or other online contact information; phone numbers; MAC address or other unique device identifiers; IP addresses; persistent online identifiers (*e.g.*, unique cookies); eponymous and non-eponymous online identities; account numbers and other account information, including account login information; Internet browsing history; traffic statistics; application usage data; current or historical geo-location; financial information (*e.g.*, account numbers, credit or debit card numbers, credit history); shopping records; medical and health information; the fact of a disability and any additional information about a customer's disability; biometric information; education information; employment information; information relating to family members; race; religion; sexual identity or orientation; other demographic information; and information identifying personally owned property (*e.g.*, license plates, device serial numbers). We recognize and acknowledge that several of these data elements may overlap with our proposed interpretation of the terms of the CPNI definition. We seek comment on these examples and whether there are other categories of linked or linkable information that we should recognize.

45. *Other PII Considerations.* Consistent with a widespread understanding of what constitutes PII, we propose to consider a BIAS customer's name, postal address, and telephone number as PII and, consequently, that they are customer PI protected by Section 222(a) in the broadband context. We recognize that because of the unique history of telephone directory information, the Commission has previously treated such information as not falling within the statutory definition of CPNI in the voice telephony context. Indeed, the statutory definition of CPNI "does not include subscriber list information," which the Act defines as information "(A) identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications . . . and (B) that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format."

46. Unlike fixed voice providers in the 1990s, today's broadband providers do not publish directories of customer information. Even in the voice context, mobile providers have never published subscriber list information, and in the fixed context, customers have long had the option to request such customer information not be disclosed (*i.e.*, that the customer be "unlisted"), inherently recognizing the personal nature of such information. Further, by signing up for broadband service, customers do not think they are consenting to the public release of their name, postal address, and telephone number, none of which play the same role in the context of BIAS, as they do in the context of telephone service. As such, we propose that there is no subscriber list information in the broadband context, and therefore that BIAS customers' names, postal addresses, and telephone numbers should be treated as PII, and seek comment on our approach. We also seek comment on whether we should treat such information as CPNI. We also propose to harmonize our voice and broadband rules and treat such information as customer PI in the voice context, except where such information is published subscriber list information. We seek comment on this proposal. Do commenters agree that this approach is consistent with current customer expectations? What are the positive and negative ramifications from this proposal? Is there another approach we can take that will give consumers control over their personal information?

47. If we adopt rules harmonizing the privacy requirements of Sections 222, 631, and 338(i), how should we interpret the term "personally identifiable information" as used in Sections 631 and 338(i)? Should we use the same definition we propose here?

48. Finally, we seek comment on alternative approaches to defining PII. For example, instead of defining the term PII, what are the benefits and burdens of leaving that term undefined and simply providing guidance on what types of information qualify? What are the benefits and burdens any alternative approaches?

7. Content of Customer Communications

49. We seek comment on how we should define and treat the content of customer communications. The sensitivity and confidentiality of the content of personal communications is one of the oldest and most-established cornerstones of privacy law. Other federal and state laws, including the Electronic Communications Privacy Act (ECPA), the Communications Assistance for Law Enforcement Act (CALEA), and Section 705 of the Communications Act provide strong protections for the content of communications carried over broadband and public switched telephone networks. In light of the strong protections for the content of communications offered by other laws, we seek comment on how we should treat content under Section 222. As a threshold matter, should some or all forms of content should also be understood as customer PI under Section 222(a) or CPNI under Section 222(h)? What are the implications of considering content as being covered by Section 222(a) or (h), as well as by other relevant federal and state laws? We do not think that providers should ever use or share the content of communications that they carry on their network without having sought and received express, affirmative consent for the use and sharing of content. We therefore seek comment on whether there is a need to provide heightened privacy protections to content of communications beyond Section 705 and ECPA, and if there is, what additional protections should be provided. Given that Section 705 provides an additional basis for requiring heightened protections for content, should we consider regulations under Section 705? We invite commenters to address any legal authorities affecting commenters' conclusions regarding content, including relevant provisions of the

ECPA and Section 705 of the Communications Act.

8. Defining Opt-Out and Opt-In Approval

50. We propose to define the term "opt-out approval" as a method for obtaining customer consent to use, disclose, or permit access to the customer's proprietary information in which a customer is deemed to have consented to the use, disclosure, or access to the customer's covered information if the customer has failed to object thereto after the customer is provided appropriate notification of the BIAS provider's request for consent consistent with the proposed requirements set forth below in Section 64.7002 of the proposed rules. We base our proposal on the definition for "opt-out approval" in the Commission's existing CPNI rules. In the broadband context, we propose to expand the Commission's existing definition to encompass all customer PI (rather than limiting it to CPNI), and eliminate the existing 30-day waiting period currently required to make a voice customer's opt-out approval effective, as the existing definition of opt-out approval for voice providers requires. We believe that, given our proposed requirements that customers must be able to opt out at any time and with minimal effort, a 30-day period may prove more cumbersome than a customer's rapid expressions of preference. Since BIAS providers come into contact with many types of customer PI beyond CPNI in their provision of broadband services, we think it appropriate under Section 222(a) to include all customer PI so that customers can exercise more control over the use and sharing of all their private information.

51. We propose to define the term "opt-in approval" as a method for obtaining customer consent to use, disclose, or permit access to the customer's proprietary information that requires that the BIAS provider obtain from the customer affirmative, express consent allowing the requested usage, disclosure, or access to the covered information after the customer is provided appropriate notification of the provider's request consistent with the requirements set forth below in Section 64.7002 of the proposed rules and before any use of, disclosure of, or access to such information. We base our proposal on the definition for "opt-in approval" in the Commission's existing CPNI rules for voice providers.

52. We seek comment on these proposed definitions, and more specifically, whether there any changes to them that can be made to (1) adapt them more appropriately to the BIAS context, or (2) provide additional clarity for consumers and providers alike. We seek comment on alternative approaches to defining these terms. We invite commenters to offer real-world examples of choice-mechanisms and discuss whether they would satisfy these definitions.

9. Defining Communications-Related Services and Related Terms

53. We seek comment on how best to define "communications-related services" for purposes of our proposal to allow BIAS providers to use customer PI to market communications-related services to their subscribers, and to disclose customer PI to their communications-related affiliates for the purpose of marketing communications-related services subject to opt-out approval. Should we limit communications-related services to telecommunications, cable, and satellite services regulated by the Commission? If so, how should we treat services that compete directly with services that are subject to Commission jurisdiction? Alternatively, should we delineate other types of services that we would consider communications-related?

54. The current Section 222 rules define communications-related services to mean "telecommunications services, information services typically provided by telecommunications carriers, and services related to the provision or maintenance of customer premises equipment." The current Section 222 rules define "information services typically provided by telecommunications carriers" to mean information services as defined in the Communication Act of 1934, as amended, that are typically provided by telecommunications carriers, such as Internet access or voice mail services. The definition further specifies that "such phrase 'information services typically provided by telecommunications carriers,' as used in this subpart, shall not include retail consumer services provided using Internet Web sites (such as travel reservation services or mortgage lending services), whether or not such services may otherwise be considered to be information services." If used in the BIAS context the combination of those definitions would include a broad array of services. We are not inclined to adopt such an expansive reading of "communications-related services," so we seek comment on how we might amend the current definitions to narrow the scope of services we would treat as "communications-related services" in the broadband context. We also seek comment on how we can best limit the definitions of "communications-related services" and, if necessary, "information services typically provided by a telecommunications provider" to align with consumer expectations about the extent to which BIAS providers use and share customer PI with communications-related affiliates.

55. Even if we adopt a narrower definition of communications-related services for purposes of the BIAS rules, we propose to amend the definition of "information services typically provided by telecommunications carriers" for purposes of the voice rules, in light of the reclassification of broadband Internet access service as a telecommunications service in the *2015 Open Internet Order,* and to align with current consumer expectations about the extent to which telecommunications carriers (other than BIAS providers) use and share customer PI with communications-related affiliates for purposes of marketing communications-related services. Should we harmonize the meaning of "communications-related services" across BIAS and other telecommunications services? Relatedly, we seek comment on what constitutes "marketing" for the purposes of this proposed rule.

10. Defining Aggregate Customer PI

56. We propose to define aggregate customer proprietary information as collective data that relates to a group or category of services or customers, from which individual customer identities and characteristics have been removed. We observe that our proposed definition for "aggregate customer proprietary information" mirrors the statutory definition for the term "aggregate customer information" in Section 222(h)(2). We use slightly different terminology to make clear that our proposed rules addressing the use of aggregate customer information are intended to address the use of all aggregate customer PI and not just aggregate CPNI. We seek comment on our proposal. Are there any reasons we should restrict our definition to include only aggregate CPNI, or alternatively, to mirror the statute's terminology of "aggregate customer information"? Do any additional security concerns arise from the use of aggregate customer PI, in the fixed or mobile context, that would not arise if our definition were restricted to including only CPNI? Would adopting the statutory term "aggregate customer information" lead to any enforcement concerns regarding what information is covered? Should our proposed definition of aggregate

customer PI apply to both voice telephony and BIAS services? Are there any reasons that the same definition of aggregate customer PI should not be used for both of these types of services?

11. Defining Breach

57. For purposes of our proposed data breach notification requirements, we propose to define "breach" as any instance in which "a person, without authorization or exceeding authorization, has gained access to, used, or disclosed customer proprietary information." Unlike the "breach" definition in our current Section 222 rules, our proposal does not include an intent element, and it covers all customer PI, not just CPNI. In defining breach we also look to state data breach notification laws, many of which do not include an intent requirement. We seek comment on this approach.

58. Not including a requirement that the unauthorized access be intentional in the definition of "breach" will ensure data breach notification in the case of inadvertent breaches that have potentially negative consequences for customers. We seek comment on this approach. Do commenters believe it is appropriate to require customer notification of all breaches, whether inadvertent or intentional? What are the burdens and benefits associated with this proposal? Should we retain the intentionality requirement in certain contexts? If so, what contexts and why? State statutes often include a provision exempting from the definition of breach a good-faith acquisition of covered data by an employee or agent of the company where such information is not used improperly or further disclosed. Should we include such an exemption in our definition of "breach" or is such a provision unnecessary or otherwise unadvisable? Are there any alternative proposals we should consider for the definition of breach?

59. We propose to include customer PI within the definition of breach, which will have the effect of applying our data breach notification requirements to breaches of customer proprietary information. Although CPNI covers many categories of confidential information, we believe that it is equally important that customers, the Commission, and other law enforcement (in certain circumstances) receive notice of a breach of other customer PI from or about the customer. Section 222(a) requires carriers to protect the confidentiality of "proprietary information" of and relating to customers. As such, we believe we have authority to extend our proposed breach reporting requirements to breaches of all customer PI, to ensure that customers receive critical protection for this broader subset of information. We seek comment on our proposal and on our authority to require breach reporting for breaches of all customer PI. What are the burdens and benefits of our proposed expansion of our requirements? How will our proposal affect small businesses?

12. Other Definitions

60. We seek comment on whether there are other terms we should define as part of adopting rules to protect the privacy of BIAS customers' proprietary information, or voice telecommunications definitions that we should revise in light of our proposals today.

61. For example, the existing CPNI rules define the term "customer premises equipment" (CPE) to mean "equipment employed on the premises of a person (other than a carrier) to originate, route, or terminate telecommunications." We seek comment whether we should adopt this definition for purposes of the proposed broadband privacy rules. What would be the scope of covered devices under the statutory definition or any alternatives? Would "premises of a person" include Internet-connected devices carried outside one's home or office? With large numbers of consumer products becoming networked devices (*e.g.*, thermostats, cars, home appliances, and others), are there particular types of uses, activities, or devices that operate over broadband Internet access service that we should or should not include within the definition of CPE? Are there other terms the Commission should define for the broadband privacy context?

62. We also seek comment on whether there are any other terms from the existing CPNI rules that we need to revise, either to differentiate them or to harmonize them with our proposed broadband privacy rules, and to address the existing forbearance for BIAS. We propose to revise the existing rules to make clear that they apply only to telecommunications services other than BIAS, by revising the definition of "telecommunications carrier" to exclude a provider of BIAS for purposes of the existing rules. We seek comment on this approach, as well as alternative approaches for doing so. Are any other changes to the definitions necessary to preserve the existing voice CPNI rules following the reclassification of broadband Internet access service? What are the benefits and burdens of updating or not updating any of these definitions, particularly for small providers? With regard to all of the current definitions, should we merely update them and keep them applicable solely to voice services, or should we craft one uniform set of definitions for both voice and broadband CPNI? Is there any reason not to harmonize these or other definitions as applied to voice and broadband providers? What are the benefits and burdens of harmonizing versus not harmonizing the definitions, particularly for small providers?

63. We recognize that if we do update any definitions, we may need to revise other aspects of the current CPNI rules to align with any revised definitions. Likewise, if we revise any of the current substantive rules we may need to revise additional definitions. Below, we seek comment on harmonizing the current rules with our proposed rules. Here we also seek comment on what other provisions of the current CPNI rules we should revise and why. For example, our current rules permit wireless providers to "use, disclose, or permit access to CPNI derived from its provision of CMRS, without customer approval, for the provision of CPE and information service(s)." At the time of adoption, BIAS was classified as an "information service," and as such, this rule was intended to cover such services. We seek comment on how we should revise this rule to reflect our reclassification of BIAS as a telecommunications service.

B. Providing Meaningful Notice of Privacy Policies

64. Transparency is one of the core fair information practice principles. Indeed, there is widespread agreement that companies should provide customers with clear, conspicuous, and understandable information about their privacy practices. There is also widespread agreement about the challenge of providing useful and accessible privacy disclosures to consumers. In recognition of the importance of transparency, we propose rules requiring BIAS providers to provide customers with clear and conspicuous notice of their privacy practices at the point of sale and on an on-going basis through a link on the provider's homepage, mobile application, and any functional equivalent. In order to ensure customers have the information they need about BIAS providers' privacy practices, we propose to provide specific direction about what information must be provided in BIAS providers' privacy notices, and we propose to require BIAS providers to provide existing customers with advanced notice of material changes in their privacy policies. To

ensure that the information that BIAS providers provide about their privacy policies is accessible to consumers, we seek comment on standardizing the formatting of broadband privacy notices and of notices regarding material changes to privacy policies. We also seek comment on ways to harmonize our proposed notice requirements with privacy notice requirements for providers of voice and video services.

1. Privacy Notice Requirements

65. In proposing specific disclosure requirements for BIAS providers' privacy and security policies, we look to the Commission's open Internet transparency rule and the existing notice obligations for traditional telecommunications carriers under Section 64.2008 of the Commission's rules, as well as the notice provisions of the Cable Privacy Act. We also look to the California Online Privacy Protection Act, which establishes privacy policy requirements for online services, and to numerous best practices regimes, including those proposed by the FTC and the National Telecommunications and Information Administration (NTIA). We also find various trade association recommendations informative, including those adopted by the Digital Advertising Alliance and the Network Advertising Initiative. In so doing, we propose rules that would impose the following notice requirements with respect to BIAS providers' privacy policies:

- *Types of Customer PI Collected and How They Are Used and Disclosed.* The notice must specify and describe:
  - ○ The types of customer PI that the BIAS provider collects by virtue of its provision of broadband service;
  - ○ How the BIAS provider uses, and under what circumstances it discloses, each type of customer PI that it collects; and
  - ○ The categories of entities that will receive the customer PI from the BIAS provider and the purposes for which the customer PI will be used by each category of entities.
- *Customers' Rights With Respect to Their PI.* The notice must:
  - ○ Advise customers of their opt-in and opt-out rights with respect to their own PI, and provide access to a simple, easy-to-access method for customers to provide or withdraw consent to use, disclose, or provide access to customer PI for purposes other than the provision of broadband services. Such method shall be persistently available and made available at no additional cost to the customer.
  - ○ Explain that a denial of approval to use, disclose, or permit access to customer PI for purposes other than providing BIAS will not affect the provision of any services to which the customer subscribes. However, the provider may provide a brief description, in clear and neutral language, describing any consequences directly resulting from the lack of access to the customer PI.
  - ○ Explain that any approval, denial, or withdrawal of approval for the use of the customer PI for any purposes other than providing BIAS is valid until the customer affirmatively revokes such approval or denial, and inform the customer of his or her right to deny or withdraw access to such PI at any time. However, the notification must also explain that the provider may be compelled to disclose a customer's PI, when such disclosure is provided for by other laws.
- *Requirements Intended to Increase Transparency of Privacy Notices.* To ensure customers can understand BIAS privacy notices, such notices must:
  - ○ Be comprehensible and not misleading;
  - ○ Be clearly legible, use sufficiently large type, and be displayed in an area so as to be readily apparent to the customer; and
  - ○ Be completely translated into another language if any portion of the notice is translated into that language.
- *Timing of Notice.* To ensure customers receive timely and persistent notice of a BIAS provider's privacy policies, the notice must:
  - ○ Be made available to prospective customers at the point of sale, prior to the purchase of BIAS, whether such purchase is being made in person, online, over the telephone, or via some other means;
  - ○ Be made persistently available:
    - ▪ Via a link on the BIAS provider's homepage;
    - ▪ Through the BIAS provider's mobile application; and
    - ▪ Through any functional equivalent to the provider's homepage or mobile application.

66. We seek comment on these proposed notice requirements. To what extent are these practices already being followed by some or most BIAS providers? To what extent are these practices consistent with the best practices of other industries? Will the proposed requirements provide BIAS customers with (1) clear and adequate notice of their BIAS provider's privacy policies, and (2) sufficient information to enable them to make informed decisions about their use and purchase of BIAS services? Will the proposed requirements ensure that BIAS customers receive sufficient information to give them confidence that their broadband provider is protecting the confidentiality of their proprietary information and providing them with sufficient ability to decide whether and when to opt in to the sharing of data with third parties? Are there additional specific requirements that we should adopt so that privacy policy information is accessible to customers with a disability, such as, for example, a link to a video of the notice conveyed in American Sign Language (ASL)?

67. *Required Disclosures.* We seek comment whether there are other types of information that we should require BIAS providers to include in the notices of their privacy policies, or if there are any categories of information we propose including that should not be required. For example, should we require BIAS providers to provide customers with information concerning their data security practices or their policies concerning the retention and deletion of customer PI? Further, to the extent that we determine that the content of customer communications is covered by the transparency requirements we propose to adopt, how can we ensure that customers have adequate notice concerning how BIAS providers treat such information? In addition, would it be technically and/or practically feasible to require that BIAS providers provide consumers with notice of the specific entities with which they intend to share their customer PI, rather than the categories of entities, as we propose above? We note that California's Shine the Light law requires businesses, upon request, to provide to their customers, free of charge and within 30 days: (1) A list of the categories of personal information disclosed by the business to third parties for the third parties' marketing purposes; (2) the names and addresses of all the third parties that received personal information from the business in the preceding calendar year; and (3) if the nature of the third parties' business cannot be reasonably determined by the third parties' name, examples of the products or services marketed by the third party. We seek comment on whether we should adopt a similar requirement. Would such a requirement place too onerous a burden on BIAS providers? What are the estimated costs of compliance associated with such a requirement, if any? Are these costs outweighed by the potential benefit to customers of disclosing this information?

68. Although our current Section 222 rules do not require voice providers to have privacy notices, many of the categories of information we propose to

require in BIAS providers' privacy notices are required as part of the current Section 222 requirements for notice before seeking approval for using or sharing CPNI. We seek comment from providers and other stakeholders on their experience with privacy disclosures in that context and on how those experiences should inform the privacy notice rules we propose to adopt for BIAS providers.

69. *Timing and Placement of Privacy Notices.* We seek comment on our proposal regarding the timing and placement of privacy notices. We believe that by requiring point-of-sale notices and requiring that notices of a BIAS provider's privacy policies be persistently available through a link on the provider's homepage and through its mobile application, gives providers two existing, user-friendly avenues for providing customers with notice of their privacy policies, while also leaving open a technology-neutral, "functional equivalent" option in the event that future innovations in technology offer new and innovative ways to provide customers with transparency. Do commenters agree? Are homepages and mobile applications two platforms through which customers are likely to interface with privacy policies? Are there any other times and points at which providers should provide customers with notice of their privacy practices, other than those we discuss above? If so, how should such notice be delivered? Should it be provided through email or another agreed-upon means of electronic communication, or should it perhaps be included regularly on customers' bills for BIAS? What would be the cost of compliance, if any, of supplying customers with privacy practice notifications via email or as part of the customer's regular bill? Are there technical means of conveying privacy notices that we might adopt?

70. Some rules and laws require annual or bi-annual notification of privacy rights. The Commission's existing voice notification rules require carriers using the opt-out mechanism to provide notices to their customers every two years. Because we require BIAS providers to have easy-to-access links to their privacy notices that are persistently available on their homepage, through their mobile applications, and through any functional equivalent, we do not think it is a good use of resources to require BIAS providers to periodically provide their privacy notices to their customers. We invite comment on that approach. When customers receive regular privacy notices, do they typically review and understand such annual notices? Do customers typically take any action in regard to such notices? Would the administrative costs of providing such annual notices outweigh the benefits to the customer of receiving annual notices? If we do adopt a regular privacy notice requirement, how should the notice be sent to BIAS customers? Would email notice to the customer's email address of record be sufficient? Should we require that any such annual notices be sent by mail to the address of record? Is there another, more effective way of providing annual notices to BIAS customers?

71. *Compliance Burden.* We seek comment on the burdens associated with complying with our proposed privacy notice framework for BIAS providers. What are the estimated costs of compliance, if any, that this notice framework will impose on providers, given that they are already obligated to provide notice of their privacy policies to customers under the open Internet transparency rule? We believe that the benefits to customer privacy of providing end users, edge providers, and the general public with meaningful information about the privacy policies of BIAS providers outweigh the administrative and regulatory costs of the proposed notice requirements. We seek comment on this conclusion. Are there any alternatives that would reduce the burdens on BIAS providers, particularly small providers, while still ensuring that BIAS providers' privacy practices are sufficiently transparent?

72. *Standardization of Privacy Notices.* We also seek comment on whether BIAS providers' privacy policy notices should be standardized to enable better comprehension and comparison of privacy practices by customers and to reduce the burden of regulatory compliance on BIAS providers. There is broad recognition of the importance of simplifying and standardizing privacy notices to make them more accessible to consumers. In its 2012 Privacy Report, for example, the FTC recognized that privacy policies in different industries would need to reflect those differences, but called for the standardization of some elements of privacy policies, including formatting and terminology "to allow consumers to compare the privacy practices of different companies and to encourage companies to compete on privacy." The following year, NTIA released a voluntary code of conduct detailing a uniform set of guidelines for mobile application providers to use in crafting short form privacy notices. In drafting the code, NTIA acknowledged that the "transparency created by displaying information about application practices in a consistent way . . . is intended to help consumers compare and contrast data practices of apps."

73. We seek comment on whether we should adopt a standardized approach for BIAS providers' privacy notices in this proceeding. Would a one-size-fits-all approach provide clear, conspicuous, and understandable information? Are there models we should look to in crafting our privacy notice requirements? For example, in the *2015 Open Internet Order,* we directed the Consumer Advisory Committee (CAC), composed of both industry and consumer interests, to formulate and submit to the Commission a proposed consumer-facing disclosure for purposes of complying with the transparency rule. Should we follow a similar approach? In a recent study of online privacy notices, researchers at Carnegie Mellon University found that certain, specific discrepancies exist between companies' actual privacy practices and users' expectations of how their information is being used or shared. The study concluded by suggesting that companies could develop shorter, user-facing privacy notices that specifically emphasize those practices where mismatches exist between a company's actual use and disclosure policies and consumers' expectations. By using models of people's privacy expectations, the study's authors suggest that companies could selectively highlight or display those elements of privacy policies that are likely to be most relevant to users. We seek comment on whether we should use such a model in developing a standardized template for privacy notices. Would such a model, or one similar to it, lessen the burden on providers of providing privacy notices while also ensuring that customers are kept adequately informed as to how their BIAS providers use and share their information? Or, should we consider multiple but structurally similar privacy policy disclosures?

74. In addition, we seek comment on whether such a standardized disclosure should be adopted as a voluntary safe harbor for any adopted privacy notice requirements. Would a safe harbor ease the regulatory burden on BIAS providers, particularly small providers? How could we ensure that a notice provided under such a safe harbor provision still allows consumers adequate opportunity to consider and comprehend the privacy policies of their respective BIAS providers?

75. We recognize that not all privacy policies may conform to a uniform template. Is there a risk that using a uniform template for privacy notices may result in the omission of crucial

information and ensuing consumer confusion or mistake? What is the best way to ensure that BIAS providers are able to convey this privacy policy information in accessible formats, like ASL? Are more general guidelines that allow for flexibility preferable to the creation of a uniform template? Should we, for example, look to the model code of conduct for mobile application short-form privacy notices that came out of the multi-stakeholder process convened by the NTIA at the Department of Commerce in 2012 and 2013? If so, what elements from that model will work well in the BIAS context and which will need to be adjusted?

76. Are there other approaches we can take to simplifying privacy notices? For example, should we require a layered privacy notice that includes a plain-language disclosure policy in addition to a more in-depth disclosure? If so, what should go into the different layers of such privacy notices?

77. In addition to simplifying and standardizing privacy notices, we seek comment on whether we should take further steps to ensure (1) that customers have access to sufficient information regarding their BIAS provider's privacy policies, and (2) that such information is presented in a form that is both palatable and easily comprehensible for customers. In particular, we seek comment on whether the Commission should require BIAS providers to create a consumer-facing privacy dashboard that would allow customers to: (1) See the types and categories of customer PI collected by BIAS providers; (2) see the categories of entities with whom that customer PI is shared; (3) grant or deny approval for the use or disclosure of customer PI; (4) see what privacy selection the customer has made (*i.e.*, whether the customer has chosen to opt in, opt out, or take no action at all with regards to the use or disclosure of her PI), and the consequences of this selection, including a description of what types and categories of customer PI may or may not be used or disclosed by a provider depending on the customer's privacy selection; (5) request correction of inaccurate customer PI; and (6) request deletion of any categories of customer PI that the customer no longer wants the BIAS provider to maintain (*e.g.*, online activity data), so long as such data is not necessary to provide the underlying broadband service or needed for purposes of law enforcement. We seek comment on the costs and benefits of requiring the creation of such a dashboard, and any alternatives the Commission should consider to minimize the burdens of such a program on small providers.

2. Providing Notice of Material Changes in BIAS Providers' Privacy Policies

78. In order to ensure that BIAS customers are fully informed of their providers' privacy policies, and can exercise informed decisions about consenting to the use or sharing of customer PI, we propose to require BIAS providers to (1) notify their existing customers in advance of any material changes in the BIAS provider's privacy policies, and (2) include specific types of information within these notices of material changes. Our proposal is consistent with, but more extensive than, the requirement we adopted in the *2015 Open Internet Order* that BIAS providers update the disclosure of their network practices, performance characteristics, and commercial terms (including privacy practices) whenever there is a material change in that disclosure. More specifically, we propose that a notice of material changes must:

- Be clearly and conspicuously provided through (1) email or another electronic means of communication agreed upon by the customer and BIAS provider, (2) on customers' bills for BIAS, and (3) via a link on the BIAS provider's homepage, mobile application, and any functional equivalent.
- Provide a clear, conspicuous, and comprehensible explanation of:
  - ○ The changes made to the BIAS provider's privacy policies, including any changes to what customer PI the BIAS provider collects, and how it uses, discloses, or permits access to such information;
  - ○ The extent to which the customer has a right to disapprove such uses, disclosures, or access to such information and to deny or withdraw access to the customer PI at any time; and
  - ○ The precise steps the customer must take in order to grant or deny access to the customer's PI. The notice must clearly explain that a denial of approval will not affect the provision of any services to which the customer subscribes. However, the provider may provide a brief statement, in clear and neutral language, describing consequences directly resulting from the lack of access to the customer's PI. If accurate, a provider may also explain in the notice that the customer's approval to use the customer's PI may enhance the provider's ability to offer products and services tailored to the customer's needs.
- Explain that any approval or denial of approval for the use of customer PI for purposes other than providing BIAS is valid until the customer affirmatively revokes such approval or denial.
- Be comprehensible and not misleading.
- Be clearly legible, use sufficiently large type, and be placed in an area so as to be readily apparent to customers.
- Have all portions of the notice translated into another language if any portion of the notice is translated into that language.

79. We seek comment on our proposal. In particular, we seek comment on whether the elements and disclosures that we propose to require as part of the notification of material changes are sufficient to provide customers with adequate and comprehensible notice of any material changes in their BIAS providers' privacy policies. Are there any additional disclosures not included in this proposed framework that might be helpful to consumers? Are any of the proposed requirements unnecessary or potentially unhelpful to consumers? Should we require that the notification triggered by this proposed provision occur within a specified timeframe in advance of the effectiveness of the provider's material change? If so, what is an appropriate timeframe during which BIAS providers should provide the notification? The *2015 Open Internet Order* defined a "material" change as "any change that a reasonable consumer or edge provider would consider important to their decisions on their choice of provider, service, or application." Do we need to update this definition to more clearly address privacy concerns raised by material changes?

80. Our proposal is consistent with industry guidelines and other standards regarding customer notice of material changes to privacy policies. Our proposed rules build on these existing regulatory frameworks and our own existing material change disclosure requirement in an attempt to ensure that customers receive proper notice of any material changes in their BIAS providers' privacy policies that may affect how those customers' PI is used or disseminated, *before* such material changes are made. We believe that by requiring BIAS providers to furnish their customers with advance notice of material changes to their privacy policies, our proposed requirement will help to ensure that the manner in which customer PI is being used and disclosed will remain transparent to customers, and will also enable customers to make informed decisions about whether to

approve or disapprove any new uses or disclosures of their PI.

81. We believe that our proposal will also help to ensure that BIAS providers cannot materially alter their privacy practices and use or share customer PI in a way in which customers may not approve or may not envision prior to customers even being made aware of such an alteration in the first place. Further, our proposed requirements that notices of material changes be clearly legible, placed in an area so as to be readily apparent to customers, and be provided through email or another electronic means of communication agreed upon by the customer and BIAS provider—as well as on customers' bills for BIAS services and through a link on the BIAS provider's homepage, mobile app, and any functional equivalent—will help ensure that customers have ample opportunity to learn of any material changes in their BIAS providers' privacy practices. This will also have the added benefit of informing interested members of the public, including privacy advocates, of any such material changes.

82. We are particularly concerned about material changes to privacy policies that BIAS providers seek to make retroactive. Our sister agency, the FTC, has also long held as a "bedrock principle" that companies should obtain affirmative express consent before making material retroactive changes to their privacy policies. This principle is echoed in the Organization for Economic Cooperation and Development's privacy guidelines, which require that data controllers specify the purpose of data use whenever those purposes change. We seek comment on whether our proposed rules are sufficient to ensure that providers seeking to retroactively change their privacy policies obtain consent to any new or newly disclosed use or sharing of customer PI, and that they honor consumers' decisions.

83. Finally, we seek comment on the burden that our proposed material change notice requirements will place on BIAS providers, particularly small providers. What are the estimated costs of compliance, if any, that this framework will impose on BIAS providers? Is there any way to modify our proposed material change rules so as to lessen the burden of these requirements on small providers while still achieving the Commission's stated goals of increasing transparency in the BIAS market and keeping consumers well-informed of their BIAS providers' privacy practices?

3. Mobile-Specific Considerations

84. As a general matter, we do not see a justification for treating fixed and mobile BIAS differently. However, we understand that there are fundamental differences between the two technologies: Specifically, their mobility. We therefore seek comment on whether there are any mobile-specific considerations to the notice requirements we have proposed above. Given the increasing ubiquity of mobile devices in today's society, we recognize that many consumers may utilize BIAS via a mobile platform—some to the exclusion of fixed devices. We seek comment on the technical feasibility of our proposed notice requirements for mobile BIAS providers. Are there any practical difficulties for providers of mobile BIAS in providing customers with adequate notice? For instance, are there any ways in which our existing and proposed notice requirements can or should be tailored to the unique characteristics of mobile services and smaller screens? Are our existing and proposed methods of notice adequate to ensure that mobile customers, specifically, are kept well-informed of their providers' respective privacy policies, as well as any material changes to such policies? What other types of notice, if any, should be required, specific to mobile BIAS providers? Is there any reason to hold mobile BIAS providers to different notice requirements, or should they be obligated to comply with the same framework as non-mobile BIAS providers? Why or why not? How would any such mobile-specific requirements benefit users of mobile BIAS? What would be the effect, if any, on broadband competition from having a different set of notice requirements applicable to mobile versus fixed BIAS providers?

4. Harmonizing Notices for Voice, Video, and Broadband Services

85. We seek comment on whether the Commission should harmonize required privacy notices regarding the use of customer information for voice, video, and broadband services. Section 64.2008 of the Commission's rules requires telecommunications carriers to provide individual notice to customers when soliciting approval to use, disclose, or permit access to customers' CPNI. Additionally, Sections 631 and 338(i) of the Act require cable operators and satellite carriers to provide notice to their subscribers of the collection, use, and disclosure of subscribers' personally identifiable information. This notice must be provided at the point of sale and at least once a year thereafter. We seek comment on the best way to harmonize privacy notice requirements for providers of voice, video, and broadband Internet access services.

86. We observe that in today's market of bundled communications services, many voice, broadband, and video providers offer multiple services. Indeed, many companies currently offer double or triple play packages that typically include both BIAS and video services, or BIAS, video, and voice services, respectively. In a variety of proceedings, the Commission has recognized the nexus between providing broadband and "triple play" packages that include other services such as video programming, and we have acknowledged that " 'a provider's ability to offer video service and to deploy broadband networks are linked intrinsically, and the federal goals of enhanced cable competition and rapid broadband deployment are interrelated.' " In light of the pre-existing notice requirements for providers of voice and video services, we seek comment on how we can minimize the burden of the notification processes proposed in this NPRM on BIAS providers.

87. We observe that some BIAS providers already provide one privacy notice for all of their bundled services on their Web sites. Given that many providers are already providing a single notice of their privacy policies on their Web sites to all their voice, video, and BIAS customers, we seek comment on whether harmonizing the privacy notice requirements for these various types of services could lessen the burden imposed on providers. More specifically, if a BIAS provider also provides privacy notices to customers under our voice rules and/or cable and satellite statutory requirements, should we allow that provider to combine the notices so that their customers only receive one notice as opposed to two or three? Should we reconcile the types of information that are required to be in consumer privacy notices across voice, video, and broadband Internet access platforms so that a provider of these services need only send a single notice to customers regarding its privacy practices? Is combining such notices likely to confuse customers? Will requiring separate privacy notices for voice, video, and broadband Internet access services be more easily understood by customers? Do the administrative costs of providing separate notices under the proposed rules as well as our voice and video rules outweigh any benefits to

consumers of receiving these notices separately?

C. Customer Approval Requirements for the Use and Disclosure of Customer PI

88. In this section, we propose a framework that empowers customers to make informed decisions about the extent to which they will allow their BIAS providers to use, disclose, or permit access to customer proprietary information for purposes other than providing BIAS. Choice is a critical component of protecting the confidentiality of customer proprietary information. When armed with clear, truthful, and complete notice of how their information is being used, customers can still only protect their privacy if they have the ability to exercise their privacy choices in a meaningful way. Empowering customers with control over their information does not, however, mean prohibiting all uses of their information, or bombarding them with constant solicitations for approval. BIAS providers may make many beneficial uses and disclosures of customer PI, and we do not propose to prevent these, so long as customers can exercise their choice in the matter. We therefore offer a proposed consumer choice framework that allows BIAS providers to engage in certain necessary and beneficial uses and sharing of information without the need for additional customer approval (such as providing service itself, or facilitating emergency response to 911 calls), as well as an efficient means of facilitating customer decisions regarding BIAS provider use and sharing of customer PI.

89. We begin this section by addressing the types of customer approval we propose to require for BIAS providers to use customer PI, and for BIAS providers to disclose customer PI to their affiliates and third parties. Section 222 and our current CPNI rules provide different levels of customer approval depending on the type of uses and the user, and we propose to do the same here. Specifically, we propose to require BIAS providers to give a customer the opportunity to opt out of the use or sharing of her customer PI prior to the BIAS provider (1) using the customer's PI to market other communications-related services to the customer; or (2) sharing the customer's PI with affiliates that provide communications-related services, in order to market those communications-related services to the customer. We also propose to require BIAS providers to solicit and receive opt-in approval from a customer before using customer PI for other purposes and before disclosing customer PI to (1) affiliates that do not provide communications-related services and (2) all non-affiliate third parties. We also seek comment on other approaches to seeking customer approval.

90. Second, we propose and seek comment on when BIAS providers should notify customers of their opportunities to approve or disapprove the use or disclosure of their information; the forms that such notification and solicitation should take, including how customers should be able to exercise their approval or disapproval; and how and when customers' choices take effect. Third, we propose and seek comment on how BIAS providers should document their compliance with the proposed rules. Fourth, we seek comment on the applicability of these proposals to small BIAS providers. Fifth, recognizing that the framework proposed here differs from the current framework in place for voice providers, we seek comment on whether we should harmonize the two frameworks, or otherwise revise and modernize the existing voice framework. We also seek comment on harmonizing the approval requirements for cable and satellite providers under Sections 631 and 338(i) of the Act with those we propose for BIAS providers.

1. Types of Approval Required for Use and Disclosure of Customer PI

91. In this section, we propose rules addressing the type of customer approval required for the use and sharing of customer PI. Customers' privacy is affected differently depending upon the entity using or accessing their private information and the purposes for which that information is being used. Each of these factors can independently affect the privacy impact of a given practice. For instance, customers who would not object to their BIAS provider using information about their bandwidth use to market a different monthly plan may object to that same information being disclosed to third parties. Meanwhile, customers may object even to uses of the same information for unexpected purposes, such as marketing wholly unrelated services to the customer. We therefore propose a framework to take these factors into account. We welcome comment on this approach.

92. Below, we first address uses and disclosure that do not require approval, or for which we propose to treat customer approval as implied. We then address the circumstances under which we propose to require customer opt-out and opt-in approval for the use and disclosure of customer PI. Finally, we seek comment on alternative frameworks for customer choice.

a. Permissible Uses and Disclosures of Customer PI for Which Customer Approval Is Implied or Unnecessary

93. In this section, we seek comment on how to implement Section 222(c)(1)'s direction that broadband providers may use, disclose, or permit access to individually identifiable CPNI without customer approval in their provision of BIAS or "services necessary to, or used in, the provision" of BIAS. We also propose to implement the goals of the statutory exceptions found in Section 222(d)—which permit BIAS providers to use, disclose, or permit access to CPNI without customer approval in specifically enumerated circumstances—to all customer PI in the broadband context, and below, propose rules that adapt those provisions to BIAS. We believe that our proposed implementation of these provisions in the broadband context is consistent with customer expectations, necessary for the efficient delivery of BIAS, and essential to allow emergency and law enforcement personnel to respond quickly and effectively during those times when their services are needed the most.

94. *Services for Which Consent to the Use of Customer PI Is Implied.* Section 222(c)(1) permits a BIAS provider to "use, disclose, or permit access to individually identifiable [CPNI] in its provision of (A) the telecommunications service from which such information is derived, or (B) services necessary to, or used in, the provision of such telecommunications service." We seek comment on how to apply this in the broadband context. In particular, how should we interpret the scope of activities that are "in the provision" of BIAS? We also seek comment on how we should interpret the clause "services necessary to, or used in, the provision" of broadband service in the BIAS context.

95. We propose to allow BIAS providers to use any customer PI, and not only CPNI, for the purpose of providing BIAS or services necessary to, or used in, the provision of BIAS. Is such a permissive expansion consistent with Congress' direction that telecommunications carriers "protect the confidentiality of proprietary information of, and relating to . . . customers"? Why or why not? Is it necessary for BIAS providers to use customer PI other than CPNI to provide BIAS? We also note that Section 222(c)(1) does not restrict uses or disclosures of CPNI that are "required by law," and seek comment whether our

rules need to explicitly recognize that BIAS providers may disclose any customer PI as required by law, including information that is not specifically CPNI.

96. We also propose to adopt rules permitting BIAS providers to use customer PI for the purpose of marketing additional BIAS offerings in the same category of service (*e.g.,* fixed or mobile BIAS) to the customer, when the customer already subscribes to that category of service from the same provider without providing the opportunity to provide opt-out or opt-in consent. We observe that the current Section 222 rules permit carriers to "use, disclose, or permit access to CPNI for the purpose of . . . marketing service offerings among the categories of service (*i.e.,* local, interexchange, and commercial mobile radio service (CMRS)) to which the customer already subscribes from the same carrier, without customer approval." Given the additional types of customer PI and CPNI available to BIAS providers today, and the ways such information may impact the privacy of customers, will permitting BIAS providers to use customer PI for their own BIAS marketing purposes without explicit customer approval adequately protect customer privacy in the broadband context? Are there some forms of customer PI that a BIAS provider should not be permitted to use in this context without receiving additional consent from its subscribers? As discussed above, if we find that Section 222 provides protections for the content of communications, we think that use of content should be subject to heightened approval requirements. What sort of requirements should we apply to a provider's use of content for purposes of marketing BIAS to an existing BIAS customer? We also seek comment whether (1) permitting broadband providers to use customer PI to market broadband services to the customers in this manner is within the bounds of authority contemplated by the statute, and (2) whether we should revise our existing Section 222 rules to limit the exception to "use" of CPNI, or otherwise revise our rules.

97. *Statutory Exceptions.* Under Section 222(d) of the Act, providers may use, disclose, or permit access to CPNI, without customer notice or approval, to: (1) Initiate, render, bill, and collect for broadband services; (2) protect the rights or property of the provider, or to protect users and other providers from fraudulent, abusive, or unlawful use of, or subscription to, broadband services; (3) provide any inbound telemarketing, referral, or administrative services to the customer for the duration of a call, if such call was initiated by the customer and the customer approves of the use of such information to provide service; and (4) provide call location information concerning the user of a commercial mobile radio service or an IP-enabled voice service in certain specified emergency situations. We propose to adopt these exceptions, tailored to the broadband context, to the use or disclosure of all customer PI. We seek comment on our proposal and on potential alternatives.

98. Section 222(d)(4) permits providers to use and disclose CPNI to provide "call location information" concerning the user of a commercial mobile service for public safety. We believe that the critical public safety purposes that underlie this provision counsel in favor of applying a similar rule in the broadband context, and that providing customer PI to emergency services, to immediate family members in case of emergency, or to providers of information or database management services for the delivery of emergency services, are uses for which customer approval is implied. We therefore propose to allow BIAS providers to use or disclose any geo-location information, or other customer PI, for these purposes. We also propose to permit BIAS providers to use or disclose location information to support Public Safety Answering Point (PSAP) queries pursuant to the full range of next generation 911 (NG911) calling alternatives, including voice, text, video, and data, in addition to the circumstances delineated by statute. Our proposal will help ensure that PSAPs and emergency personnel have timely access to the full set of information they may need to respond quickly and effectively to locate and aid not only users of legacy voice services, but users of data, video, and text services as well. We also seek comment whether BIAS providers must support automated requests from PSAPs, to ensure that emergency response is not hampered by time-consuming or inefficient processes for necessary information. We seek comment on our proposed application of this statutory provision in the broadband context and on potential alternative approaches to the Section 222(d)(4) exception. Alternatively, we seek comment whether we could directly apply the provisions of Section 222(d)(4) to BIAS, by interpreting "call location information" to mean "broadband usage location information."

99. In addition, we propose to interpret Section 222(d)(2) to permit BIAS providers to use or disclose CPNI whenever reasonably necessary to protect themselves or others from cyber security threats or vulnerabilities. Section 222(d)(2) permits providers to use CPNI to protect the rights or property of the carrier, or to protect users of those services and other carriers from fraudulent, abusive, or unlawful use of, or subscription to, such services. We believe that this proposal comports with the statute, because cyber security threats and vulnerabilities frequently harm the rights or property of providers, and typically harm users of those services and other carriers through the fraudulent, abusive, or unlawful use of, or subscription to, such services. Furthermore, we note that other statutes explicitly permit particular types of disclosure, which may encompass customer PI. We seek comment on this proposal. Should we extend this exception to include all customer PI? What, if any, guidance should we provide about what constitutes a cybersecurity threat entitled to this exception?

100. We also propose to interpret Section 222(d)(2) to allow telecommunications carriers to use or disclose calling party phone numbers, including phone numbers being spoofed by callers, without additional customer consent when doing so will help protect customers from abusive, fraudulent or unlawful robocalls. Month after month, unwanted voice robocalls and texts (together, "robocalls") top the list of consumer complaints we receive at the Commission. At best, robocalls represent an annoyance; at worst they can lead to abuse and fraud. All concerned parties—regulators, providers, and consumer advocates—agree that better call blocking and filtering solutions are critical to helping consumers. To that end, we recently clarified that voice providers may offer their customers call blocking solutions without violating their call completion requirements, and encouraged providers to offer those solutions. We expect that sharing of calling party information to prevent robocalls will benefit consumers. We seek comment on this proposal, and on how well it fits within the framework of 222(d)(2). Is it consistent with customer expectations?

101. We also seek comment on what other customer PI telecommunications carriers, including interconnected VoIP providers, should be allowed to use or share without additional consumer consent pursuant to Section 222(d)(2) in order to prevent abusive, fraudulent, or unlawful robocalls. What other types of customer PI could help prevent robocalls, if shared with other providers and third party robocall solution

providers? Are BIAS or other providers already using or sharing some types of customer PI to mitigate the propagation of traffic that is fraudulent, abusive, or unlawful? If so, are there lessons that can be learned about the use or sharing of information that will assist in the fight against robocalls?

102. We also seek comment on whether we should expand the exceptions in Section 222(d) in the broadband context to permit broadband providers to use all customer PI for these delineated purposes. Is there any reason why providers would need to use customer PI that is not CPNI for the purposes Congress enumerated? If so, would such needs be outweighed by the countervailing interest in protecting the privacy of customer information?

103. Finally, consistent with our findings in the voice context, we propose to permit broadband providers to use CPNI without customer approval in the provision of inside wiring installation, maintenance, and repair services. We seek comment on this proposal, and specifically whether commenters believe there is any reason not to apply this provision in the broadband context. We also seek comment whether we should establish any other exceptions to our proposed framework. For instance, the existing CPNI rules permit providers to use or disclose information for the limited purpose of conducting research on the health effects of CMRS. Should a similar exception apply in the BIAS context? We encourage commenters to identify why any such exceptions would be consistent with Section 222 or other applicable laws.

b. Customer Approval Required for Use and Disclosure of Customer PI for Marketing Communications-Related Services

104. FTC best practices counsel that consumer choice turns on the extent to which the practice is consistent with the context of the transaction or the consumer's existing relationship with the business. Consistent with this and our existing rules, we propose that, except as permitted above in Part III.C.1.a, BIAS providers must provide a customer with notice and the opportunity to opt out before they may use that customer's PI, or share such information with an affiliate that provides communications-related services, to market communications-related services to that customer. We seek comment on this proposal.

105. This approach is similar to the approach taken by our current Section 222 rules, and we believe it is consistent with customers' expectations. However, we invite comment on this approach, specifically on customers' expectations and preferences regarding how their broadband provider may itself use customer PI; and for what purposes it should be allowed to share information with its affiliates subject to opt-out approval. Given the prevalence of bundled service offerings, do customers expect that their broadband providers could or should themselves use or share the customers' proprietary information with affiliates to market voice, video, or any types of communications-related services tailored to their needs and preferences without their express or implied approval? Or would customers prefer and expect to have their customer PI used or shared with affiliates only after the customers have affirmatively consented to such use or sharing? Do customers' expectations depend as much on the type of customer PI that is being shared as with the purpose of the sharing or the parties with whom the information is being shared? For example, below, we seek comment on whether we should require heightened consent obligations for highly sensitive information, including geo-location information.

106. We are mindful that in adopting a framework for customer approval for use by and disclosure to affiliates of customer PI, we do not want to inadvertently encourage corporate restructuring or gamesmanship driven by an interest in enabling use or sharing of customer PI subject to less stringent customer approval requirements. We believe that we can discourage such gamesmanship by treating use by an affiliate as subject to the same limits as use by a BIAS provider. We seek comment on this proposal. We also seek comment on what effect our proposed choice requirements will have on marketing of broadband and related services, as well as on the digital advertising industry. What effect will they have on competition between BIAS providers and over-the-top (OTT) service providers that offer services that may be a competitive threat or a potential competitor to separate voice, video, or information services offered by broadband providers, and which are not subject to our rules?

107. We also observe that in adopting the existing Section 222 rules for the sharing of CPNI with affiliates, the Commission concluded that because principles of agency law hold carriers responsible for their agents' improper uses or disclosures of CPNI, carriers have greater incentives to maintain appropriate control of CPNI disclosed to agents. The Commission concluded that an opt-out regime for the sharing of CPNI with affiliates that offer communications-related services for purposes of marketing such services would adequately protect consumers' privacy because a carrier's need to maintain a continuing relationship with its customer, and the risk of being held responsible for the misuse of customer information by an affiliate, would incentivize the carrier to prevent privacy harms. We believe such findings to be relevant in the broadband context as well, and seek comment on whether such findings are applicable to BIAS. Do consumers have a different expectation of privacy when it comes to BIAS, as opposed to voice, affiliates? Does the changing nature of affiliate relationships require more caution in the BIAS context than the voice context?

108. Alternatively, we seek comment whether we should require BIAS providers to obtain customer opt-in approval for the use and sharing of all customer PI, except as described in Part III.C.1.a. Would such an approach be "narrowly tailored" to materially advance the government's interest under *Central Hudson*? Conversely, would a requirement of opt-out approval be more appropriate for *all* BIAS provider uses of customer PI and sharing with affiliates? Should we adopt the FTC's recommendation that affiliates generally be treated as "third parties . . . unless the affiliate relationship is clear to consumers"? If so, how would we determine if the relationship is clear to consumers? Would co-branding suffice? We also seek comment on whether we should treat all affiliates as third parties, that is, requiring opt-in consent from customers for any sharing with any affiliates. Would such a rule be properly tailored to meet the substantial interest in protecting customer privacy? Would it promote gamesmanship in the corporate structure of BIAS providers? We also seek comment on how we should treat third parties acting as contractors and performing functions for or on behalf of a BIAS provider. Should they be treated differently than other types of third parties?

c. Customer Approval Required for Use and Disclosure of Customer PI for All Other Purposes

109. Consistent with the existing voice rules and other privacy frameworks, we propose to require BIAS providers to seek and receive opt-in approval from their customers before using or sharing customer PI for all uses and sharing other than those described above in Parts III.C.1.a and III.C.1.b. Specifically, we propose to require BIAS providers to obtain customer opt-in approval before (1) using customer PI

for purposes other than marketing communications-related service; (2) sharing customer PI with affiliates providing communications-related services for purposes other than marketing those communications-related services; and (3) sharing customer PI with all other affiliates and third parties. Consistent with the Commission's existing rules, we include joint venture partners and independent contractors within the category of "third parties" for purposes of our proposed rules. We believe that customers desire and expect the opportunity to affirmatively choose how their information is used for purposes other than marketing communications-related services by their provider and its affiliates. We seek comment on this proposal and on potential alternatives to these requirements.

110. *BIAS Providers and Affiliates.* We seek comment whether BIAS providers need or benefit from using customer PI for purposes other than marketing communications-related services. If so, what are those uses, and are they consistent with customer expectations? What are the privacy risks for customers from those additional uses? We observe that many companies can meet the Act's definition of "affiliate" while bearing little resemblance—in the services offered, or even in their name—to what customers recognize as their provider. This, combined with lack of competition between BIAS providers and with high switching costs, could negatively impact BIAS providers' incentives in protecting the customer-carrier relationship with respect to use and disclosure of customer PI to affiliates. Does obtaining opt-in permission for these uses or disclosures prevent BIAS providers or consumers from making valuable use of this information? Does our proposed approach align with customer expectations of how their PI should be treated by their BIAS provider and the provider's affiliates? Should opt-in consent be required for disclosure or use of certain customer PI in the mobile context? Most notably, should we require opt-in consent in the mobile context for sharing geo-location data with affiliates, regardless of whether it is required in the fixed context? Does this proposal accommodate the expanded scope of uses and services now provided by BIAS affiliates and others, particularly given the above-noted concerns about the breadth of affiliates in today's BIAS environment?

111. *Third Parties.* The Commission has a substantial government interest in protecting the privacy of customer information, and our proposal is designed to materially advance that interest. Research demonstrates that customers view the use of their personal information by their broadband provider differently than disclosure to or use by a third party for a variety of reasons. More recently, studies from the Pew Research Center show that the vast majority of adults deem it important to control who can get information about them. Increasing the number of entities that have access to customer PI logically increases the risk of unauthorized disclosure by both insiders and computer intrusion. Risk of harm to the customer is exacerbated by the fact that third-party entities receiving customer information have no direct business relationship with the consumer and, hence, a reduced or absent incentive to honor the privacy expectations of those customers. As the Commission has found in the voice context, once confidential customer information "enters the stream of commerce, consumers are without meaningful recourse to limit further access to, or disclosure of, that personal information." We anticipate that this is equally true for other forms of customer PI.

112. For these reasons, and because the use of customers' personal information might fall outside the protections of Section 222 once that information is disclosed to third parties, we believe that the threat to broadband customers' privacy interest from having their personal information disclosed to such entities without their affirmative approval is a substantial one, and there is a greater need to ensure express consent from an approval mechanism for third party disclosure. We seek comment on this analysis, and in particular, the threat to broadband customers' privacy stemming from disclosure of customer information to third parties.

113. We seek comment on the burdens that the proposed opt-in framework for disclosure to third parties would impose on broadband providers. Are such costs outweighed by the providers' duty to protect their customers' private information and customers' interest in maintaining control over their private information? We note that our current voice rules require opt-in approval for disclosure to most third parties. Further, some state laws also require customer permission for ISPs to disclose information if the disclosure is not in the ordinary course of the ISP's business. We also seek comment on the effect that our proposal will have on small providers.

114. We seek comment on what effect, if any, our proposed opt-in approval framework will have on marketing in the broadband ecosystem, over-the-top providers of competing services, the larger Internet ecosystem, and the digital advertising industry. We recognize that edge providers, who may have access to some similar customer PI, are not subject to the same regulatory framework, and that this regulatory disparity could have competitive ripple effects. However, we believe this circumstance is mitigated by three important factors. First, the FTC actively enforces the prohibitions in its organic statute against unfair and deceptive practices against companies in the broadband ecosystem that are within its jurisdiction and that are engaged in practices that violate customers' privacy expectations. We have no doubt that the FTC will continue its robust privacy enforcement practice. Second, the industry has developed guidelines recommending obtaining express consent before sharing some sensitive information, particularly geo-location information, with third parties, and large edge providers are increasingly adopting opt-in regimes for sharing of some types of sensitive information. Third, edge providers only have direct access to the information that customers choose to share with them by virtue of engaging their services; in contrast, broadband providers have direct access to potentially *all* customer information, including such information that is not directed at the broadband provider itself to enable use of the service. We seek comment on these expectations. Do commenters agree that these factors mitigate any potential competitive effects that might result from our proposed opt-in framework for disclosure of customer PI to third parties? What other factors counsel for or against it?

115. *Alternatives.* In the alternative, we seek comment whether an opt-out approval framework would be more appropriate for BIAS providers' (and their affiliates') use of customer PI for purposes other than marketing communications-related services, and for disclosure of customer PI to third parties, or for some subset of such activities. Are there reasons why such uses and disclosures of customer PI—or some subset of disclosures—should be subject to a more lenient standard of consent, such as opt-out approval? Why or why not? Would opt-out approval be an effective means of protecting customers from the harms that are attendant upon unknowing and unwanted third party disclosures, or from unexpected uses of their customer PI by their broadband providers? If so,

are there particular types of uses, data, or third parties for which a heightened standard of approval should be required?

d. Other Choice Frameworks

116. We have sought comment on one framework for approaching the types of control to give consumers over their customer PI. We also invite commenters to propose other frameworks for ensuring that broadband customers are given the ability to control the use and disclosure of their confidential information.

117. Are there other ways of differentiating between expected and unexpected uses and contexts for BIAS provider use of customers' PI that would be more useful? How should different types and contexts of information and usage be assigned different levels of required approval? Given the various types of information at issue, is there the risk that customers could be overwhelmed by choice and allow default options to stand? Would this militate towards requiring opt-in approval for more types of information? What approach, if any, best balances consumer benefits with minimizing regulatory burdens on broadband providers?

118. In particular, we seek comment whether certain types of "highly sensitive" customer information should be used by BIAS providers, even for the provision of the service, or shared with their affiliates offering communications-related services, only after receiving opt-in approval from customers. For example, the FTC has recognized certain types of information as particularly sensitive, including Social Security numbers and financial information, geo-location information, children's information, and health information. Given the highly sensitive nature of such information, customers may have an interest in ensuring that such data is not used without their prior, affirmative authorization. We seek comment on these issues. For example, location-based information—particularly mobile geo-location data—that reveals a customer's residence or current location is particularly sensitive in nature, and consumers may have a keen interest in safeguarding such data out of concerns for both safety and basic privacy. In the voice context, Congress recognized that use of "call location information" should not be used or disclosed without the "express prior authorization of the customer." How should we consider treatment of location information in the broadband context? Likewise, we seek comment on what steps we could take to ensure knowing consent regarding the customer PI of children. Are there other types of information that we should treat as highly-sensitive and subject to opt-in protection? For example, should practices that involve using or sharing a customer's race or ethnicity, or other demographic information about a customer be subject to heightened privacy protections? Are there any types of information that BIAS providers should never use for purposes other than providing BIAS services?

119. We also seek comment on how to treat the content of communication, if we determine that it is covered by Section 222. The content of communications contain a wide variety of highly personal and sensitive information. Congress has also recognized that content of communications should be protected in all but the most exceptional circumstances. In addition to personal privacy implications, provider use of communications content raises competitive issues. A broadband provider may be able to glean competitively sensitive information from the contents of customers' communications. Would such conduct be prohibited under the Commission's general conduct rule prohibiting carriers from unreasonably interfering with or unreasonably disadvantaging end users' ability to select, access, and use broadband Internet access service or the lawful Internet content applications, services, or devices of their choice? We seek comment on whether the use or sharing, including with affiliates, of the content of customer communications should be subject to opt-in approval. We also seek comment on other approaches to the use of the content of customer communications, including how such approaches interact with our treatment of other types of information covered by Section 222.

120. Finally, we seek comment whether customers expect their BIAS providers to treat their PI differently depending on how the provider acquires it, and whether BIAS providers do and should treat such information differently. Should a broadband provider obtain some form of consumer consent before combining data acquired from third-parties with information it obtained by virtue of providing the broadband service?

2. Requirements for Soliciting Customer Opt-Out and Opt-In Approval

121. In this section, we seek comment on the appropriate procedures and practices for BIAS providers to obtain meaningful customer approval for the use or disclosure of customer PI. To that end, we first propose to require BIAS providers to solicit customer approval the first time that a BIAS provider intends to use or disclose the customer's PI in a manner that requires customer approval under our proposed rules. Second, we seek comment on the format of BIAS provider solicitations for customer approval, as well as the methods and formats by which customers may exercise their privacy choices. Specifically, we propose that BIAS providers must give customers a convenient and persistent ability to express their approval or disapproval of the use or disclosure of their information, at no cost to the customer. Third, we propose that a customer's choice must persist until it is altered by the customer, and that it should take effect promptly after the customer's expression of her choice. Fourth, we seek comment whether to apply the voice notice requirements specific to one-time usage of CPNI to BIAS providers' one-time usage of customer PI. We seek comment on these proposals, and reasonable alternatives thereto.

122. *Notice and Solicitation of Customer Approval Required Prior to Use or Disclosure of Customer PI.* To ensure that customers provide meaningful approval, we propose to require BIAS providers to solicit customer approval—subsequent to the point-of-sale—when a BIAS provider first intends to use or disclose the customer's proprietary information in a manner that requires customer approval. To ensure that customers' approval is fully informed, we propose to require BIAS providers to notify customers of the types of customer PI for which the provider is seeking customer approval to use, disclose or permit access to; the purposes for which such customer PI will be used; and the entity or types of entities with which such customer PI will be shared. We seek comment on this approach. Is there other information that a provider should be required to share as part of receiving opt-out or opt-in consent for the use or disclosure of customer information? For example, should a provider be required to share information about the arrangements it has made with third parties for the use of customer PI? If so, what information should they be required to share? We also seek comment on whether providers should be required to provide a link to the provider's privacy policy notice or other information when seeking approval for the use or sharing of customer PI. We are cognizant of the risk of information-overload if consumers are given more information than they need to make an informed

decision. We believe that our proposal, combined with the requirement to have a persistent and easily available longer privacy policy notice strikes the right balance, but we invite comment on whether there is other or different information that BIAS customers will need to make well informed opt-in and opt-out decisions. Also, while we believe that notice of a BIAS provider's privacy policies and customers' approval rights at the time of sale is necessary to help customers make an informed decision on which broadband service to purchase, such notice can often be too remote in time from when the information is actually used to give customers meaningful choice. Therefore, we believe that customers' informed approval requires notification and solicitation the first time that a BIAS provider will actually use or disclose a customer's PI. We seek comment on our proposal.

123. As the FTC has concluded, in order to be most effective, choice mechanisms that allow consumers control over how their data is used should be provided "at a time and in a context that is relevant to consumers." We believe that providing notice and soliciting customer choice at this time may give customers useful information when it is most relevant to them, offsetting the risk that customers will be presented with so much information at the point of sale that they will not be able to meaningfully read and understand the privacy policies. Further, providing notice and soliciting choice before a provider wishes to use or disclose customer PI may also reduce the need for annual or other periodic notices. We seek comment on our proposal. Could notices upon use or disclosure contribute to "notice fatigue" over time, instead of lessening its impact at point of sale?

124. We also seek comment whether we should require BIAS providers to notify customers of their privacy choices and solicit customer approval at other prominent points in time. For example, should broadband providers be required to solicit customers' "just-in-time" approval whenever the relevant customer PI is collected or each time the broadband provider intends to use or disclose the relevant customer PI? What are the practical and technical realities of any such approaches? Are there any mobile-specific considerations that the Commission should consider in determining when the opportunity to provide customer approval should be given?

125. *Notice and Solicitation Methods.* We seek comment on how BIAS providers should notify customers of upcoming uses and disclosures of their PI, and solicit customer approval for those uses and disclosures. Should we permit each BIAS provider to determine the best method for soliciting customer approval, such as through email or another agreed upon means of electronic communication; separately by postal mail to the customer address of record; included on customer bills; or through some other method? Are there other technological solutions to providing customers notice that would minimize the burden on providers, and that would be equally or more efficient than these methods, such as, for example, a "notification" on the customer's device that accesses the broadband service? Alternatively, should we require BIAS providers to use a specific method or methods? We seek comment on any particular requirements that should apply for any of the above methods of soliciting approval.

126. *Customer Approval Methods.* We propose to require BIAS providers to make available to customers a clearly disclosed, easy-to-use method for the customer to deny or grant approval, such as through a dashboard or other user interface that is readily apparent and easy to comprehend, and be made available at no cost to the customer. We propose that such approval method should be persistently available to customers, such as via a link on a BIAS provider's homepage and mobile application, as well as any functional equivalents to them. We believe that this proposed requirement will directly and materially protect customer privacy by ensuring that customers have the ample opportunity to exercise their approval rights. Customers cannot effectively exercise their approval if the interface for expressing that choice is difficult to use, or if it is only rarely or sporadically available.

127. We seek comment on our proposal, and on any further requirements we should impose on the opportunity to grant or deny approval that may enhance customer comprehension. Should customers be given the ability to approve or disapprove uses within the text of the notice or solicitation, in addition to a dashboard or other persistent mechanism? And, given that some customers are unaccustomed to interacting with their provider via applications or the provider's homepage, should we require broadband providers to provide customers with the ability to provide customer approval via other written, electronic, or oral means, *e.g.*, through written correspondence, a toll-free number, or dedicated email address? How would such a requirement affect provider burdens?

128. We also seek comment on whether there are any mobile-specific considerations that we should consider in determining how the opportunity to provide customer approval should be given. For example, since mobile BIAS may be more accessible to children beyond parental supervision, are different approval methods necessary regarding consent of minors on mobile devices? Finally, we seek comment whether any of our proposed requirements are unnecessary or unlikely to aid customers.

129. *Effectiveness of Customer Choice.* We propose that approval or disapproval to use, disclose, or permit access to customer PI obtained by a broadband provider must remain in effect until the customer revokes or limits such approval or disapproval, and seek comment on this proposal. Are there particular considerations (for instance, with already-collected information) when customers disapprove of uses that they have previously approved, or vice versa? We also propose that BIAS providers must act upon customers' privacy choices "promptly" after customers provide or withdraw consent for the use or disclosure of their information. We seek comment whether it is necessary for the Commission to establish guidelines for what "promptly" means in this context. Why or why not? If so, we seek comment on what the guidelines and time frame might be. If a customer later reconsiders and changes his approval, how long should the provider be given to update this consent choice? Should the two lengths of time be the same? How does this proposal affect potential rules limiting data retention and requiring disposal of customer data? Would a customer's withdrawal of consent require disposal of her already-collected data immediately, after a period of time, or not at all?

130. *Notice Requirements for One-Time Usage of Customer PI.* Additionally, we seek comment on whether to apply or adapt the current voice notice requirements specific to one-time usage of CPNI to BIAS providers' one-time usage of customer PI. The current voice rules allow a more flexible process for providing notice and accepting consent, so long as the approval granted is for the limited purposes of the particular interaction, such as during the duration of a customer service call or during a real-time chat. Do these or some other requirements make sense in the broadband context? Do they make sense

as extended to all customer proprietary information?

3. Documenting Compliance With Proposed Customer Consent Requirements

131. In order to ensure that the requisite approval is clearly established before the use or disclosure of customer PI, and also that the approval can be demonstrated after the use or disclosure, we propose to require BIAS providers to document the status of a customer's approval for the use and disclosure of customer PI, and we seek comment on that proposal. We base our proposal on the existing rules governing safeguards on the use and disclosure of customer PI for voice telecommunications services. Specifically, we propose requiring BIAS providers to (1) maintain records on customer PI disclosure to third parties for at least one year, (2) maintain records of customer notices and approval for at least one year, (3) adequately train and supervise their personnel on customer PI access, (4) establish supervisory review processes, and (5) provide prompt notice to the Commission of unauthorized uses or disclosures. With these proposed rules, we seek to promote consumer confidence that BIAS providers are adequately protecting customers' PI, to provide clear rules of the road to BIAS providers about their obligations, and to maintain consistency with existing legal requirements and customer expectations. Are there any other or different requirements that we should adopt in order to ensure that providers document their compliance with our customer consent requirements? Should we require BIAS providers to file an annual compliance certification with the Commission, as is required under the current Section 222 rules? Are there alternative approaches to safeguard customers' proprietary information and boost customer confidence in the privacy of their customer PI that we should consider?

132. Finally, in addition to the above proposals, we seek comment on any other mechanisms or alternatives that would help document compliance with our proposed customer approval framework, boost customer confidence in BIAS provider safeguards of customer PI, and harmonize the proposed rules with existing legal requirements and customer expectations.

4. Small BIAS Providers

133. We seek comment on ways to minimize the burden of our proposed customer choice framework on small BIAS providers. In particular, we seek comment on whether there are any small-provider-specific exemptions that we might build into our proposed approval framework. For example, should we allow small providers who have already obtained customer approval to use their customers' proprietary information to grandfather in those approvals? Should this be allowed for disclosure to third parties? Should we exempt providers that collect data from fewer than 5,000 customers a year, provided they do not share customer data with third parties? Are there other such policies that would minimize the burden of our proposed rules on small providers? If so, would the benefits to small providers of any suggested exemptions outweigh the potential negative impact of such an exemption on the privacy interests of the customers who contract for the provision of BIAS with small providers? Further, were we to adopt an exemption, how would we define what constitutes a "small provider" for purposes of that exemption?

5. Harmonizing Customer Approval Requirements

134. We seek comment on whether we should take steps to harmonize the existing customer approval requirements for voice services with those requirements we have proposed for broadband providers to ensure that the privacy of customers' PI is protected, and that our regulations are competitively neutral, across all platforms. Are there aspects of the existing rules that should be more explicitly incorporated into our proposal, or eliminated to better comport with our proposal? Are there aspects of the proposed rules that should be applied in the voice context? Would harmonizing these rules benefit traditional voice subscribers? Would harmonizing our existing and proposed rules benefit providers who offer both services by clarifying and streamlining the customer approval requirements applicable to both types of services? In harmonizing the existing voice rules with our proposed rules for BIAS providers, how should we address voice services provided to large enterprise customers, which are currently not subject to the voice rules? Are there other changes that can be made to our rules that govern the marketing of service offerings that might improve them in the voice context? We also seek comment on how our reclassification of BIAS as a telecommunications service affects the obligations of voice carriers under our rules.

135. We also seek comment on whether we should adopt rules harmonizing the approval requirements we propose for BIAS customers with the approval requirements for use of subscriber information in Sections 631 and 338(i). We note that those provisions of the Act prohibit the use of the cable or satellite system to collect, use, or share personally identifiable information for purposes other than provision of the underlying services and other very limited purposes, absent the express written or electronic consent of the subscriber, except to provide the underlying service and for certain other very limited purposes.

D. Use and Disclosure of Aggregate Customer PI

136. Because of the complexity of the issues surrounding aggregation, de-identification, and re-identification of the data that BIAS providers collect about their customers, we propose to address separately the use of, disclosure of, and access to aggregate customer information. Consistent with reasonable consumer expectations, existing best practices guidance from the FTC and NIST, and Section 222(c)(3)'s treatment of aggregate CPNI, we propose to allow BIAS providers to use, disclose, and permit access to aggregate customer PI if the provider (1) determines that the aggregated customer PI is not reasonably linkable to a specific individual or device; (2) publicly commits to maintain and use the aggregate data in a non-individually identifiable fashion and to not attempt to re-identify the data; (3) contractually prohibits any entity to which it discloses or permits access to the aggregate data from attempting to re-identify the data; and (4) exercises reasonable monitoring to ensure that those contracts are not violated. We also propose that the burden of proving that individual customer identities and characteristics have been removed from aggregate customer PI rests with the BIAS provider.

137. Recognizing that aggregate, non-identifiable customer information can be useful to BIAS providers and the companies they do business with, and not pose a risk to the privacy of consumers, Section 222(c)(3) permits telecommunications carriers to use, disclose, or permit access to aggregate customer information—collective data that relates to a group or category of services or customers, from which individual customer identities and characteristics have been removed—without seeking customer approval. Our proposed rule expands this concept to include all customer PI, and imposes safeguards to ensure that such information is in fact aggregated and non-identifiable, and that safeguards

have been put in place to prevent re-identification of this information.

138. We believe our multi-pronged proposal, grounded in FTC guidance, will give providers enough flexibility to ensure that as technology changes, customer information is protected, while at the same time minimizing burdens and maintaining the utility of aggregate customer information. Below we discuss and seek comment on each of the prongs of our proposed rule regarding the use and disclosure of aggregate customer PI. We also seek comment on whether we should extend our proposed rule to providers of voice telecommunications services. To the greatest extent possible, we ask that commenters ground their comments in practical examples: What kinds of aggregate, non-identifiable information do or can BIAS providers use and share?

139. *Not Reasonably Linkable.* In order to protect the confidentiality of individual customers' proprietary information, the first prong of our approach would require providers to ensure the aggregated customer PI is not reasonably linkable to a specific individual or device. Our proposal recognizes that techniques that once appeared to prevent re-identification of aggregate information have increasingly become less effective. It is also consistent with FTC guidance which recommends that companies take reasonable measures to ensure that the data is de-identified, and recommends that this determination should be based on the particular circumstances, including the available methods and technologies, the nature of the data at issue, and the purposes for which it will be used.

140. We seek comment on this proposal. Are the factors identified by the FTC well-suited to determining whether a BIAS provider has taken reasonable measures to de-identify data? Are there other factors that we should expect providers to take into account? Should we provide guidance on what we mean by linked and linkable information? NIST defines linked information as "information about or related to an individual that is logically associated with other information about the individual," and linkable information as "information about or related to an individual for which there is a possibility of logical association with other information about the individual." Should we adopt either or both of these standards? Are there other approaches we should use to decide whether information is reasonably linkable? For example, HIPAA permits covered entities to de-identify data through statistical de-identification, whereby a properly qualified statistician, using accepted analytic techniques, concludes that the risk is substantially limited that the information might be used, alone or in combination with other reasonably available information, to identify the subject of the information.

141. We seek comment on alternative approaches to this prong and the comparative merits of each possible approach. We also seek comment whether we should require BIAS providers to retain documentation that outlines the methods and results of the analysis showing that information that it has treated as aggregate information has been rendered not reasonably linkable.

142. *Public Commitments.* Prong two of our proposal would require BIAS providers to publicly commit to maintain and use aggregate customer PI in a non-individually identifiable fashion and to not attempt to re-identify the data. Such public commitments would help ensure transparency and accountability, and accommodate new developments in the rapidly evolving field of privacy science. This prong and the next are consistent with FTC guidance and the Administration's draft privacy bill recommending that companies publicly commit not to re-identify data and contractually prohibit any entity with which a company shares customer data from attempting to re-identify it. We seek comment on this proposal. Would this requirement help ensure that providers are protecting the confidentiality of customer PI? How could or should a BIAS provider satisfy the requirement to make a public commitment not to re-identify aggregate customer PI? For example, would a statement in a BIAS provider's privacy policy be sufficient?

143. *Limits on Other Entities.* The third prong of our proposal would require providers to contractually prohibit any entity to which the BIAS provider discloses or permits access to the aggregate customer data from attempting to re-identify the data. This proposal presents a modern approach to the difficulties of ensuring the privacy of aggregate information, recognizing that businesses are often in the best position to control each other's practices. Researchers have argued that such contractual prohibitions are an important part of protecting consumers' privacy, because making data completely non-individually identifiable may not be possible or even desirable. We recognize that the categories of what can potentially be reasonably linkable information will continue to evolve, and we believe these contractual provisions provide a critical layer of privacy protection that remains constant regardless of changes in the technology.

144. *Reasonable Monitoring.* Related to the requirements for prong three, the fourth prong of our approach requires BIAS providers to exercise reasonable monitoring of the contractual obligations relating to aggregate information and to take reasonable steps to ensure that if compliance problems arise they are immediately resolved. This prong is a logical outgrowth of the previous prongs, and it is consistent with the 2012 FTC Privacy Report. We seek comment regarding the types of monitoring and remediation steps BIAS providers should be required to take to ensure that entities with which they have shared aggregate customer PI are not attempting to re-identify the data. What potential burdens and benefits would arise from this proposal?

145. *Alternatives.* Alternatively, we seek comment whether we should develop a list of identifiers that must be removed from data in order to determine that "individual customer identities and characteristics have been removed." If we take such an approach, should it replace all, a portion of, or be in addition to our current proposal? HIPAA incorporates such a standard, and under this approach, a covered entity or its business associate may de-identify information by removing 18 specific identifiers. Under HIPAA, the covered entity must also lack actual knowledge that the information could be used alone or in combination with other information to identify an individual who is a subject of the information. We are aware of criticisms that the approach taken by HIPAA no longer provides the levels of protection previously assumed. One legal scholar, for example, argues that "[t]he idea that we can single out fields of information that are more linkable to identity than others has lost its scientific basis and must be abandoned." Are such concerns valid? Were we to adopt a similar standard to that in HIPAA, what categories of identifiers would be relevant in the broadband context? And, given the wide variety of customer data to which BIAS providers have access by virtue of their provision of BIAS, is such a list even feasible? Is it likely that any list developed would be rendered obsolete by technological developments in the data re-identification field? How could we best ensure that the categories we identify remain adequate to prevent aggregate customer PI from being re-identified? Should we adopt a catch-all to address evolving methods of de-identification and re-identification of aggregate customer PI, and if so, how

would such a process work? We also seek comment whether, if we were to pursue such an approach, we should also adopt an "actual knowledge" standard, as HIPAA includes. How would the Commission enforce such a standard, and would it encourage willful ignorance on the part of broadband providers?

146. Are there any additional or alternative requirements we should adopt that might make aggregate customer information less susceptible to re-identification? If so, what are they, and why would they be preferable to the procedures we have proposed above? As commenters consider whether we should adopt each of the prongs of our proposed rule, and any proposed alternatives, we welcome comment on how providers would demonstrate compliance with each prong of the proposal, and of any alternative proposals. Are there specific record keeping requirements we should impose on providers to demonstrate compliance? We also seek comment on the costs and benefits of each prong and of all of them collectively. We invite proposals on how we could limit any burdens associated with compliance, particularly for smaller providers.

147. We also seek comment on how de-identified, but non-collective data should be treated under Section 222 and our rules. We note that there is an existing petition before the Commission that may address some of these issues. *See* Petition of Public Knowledge et al. for Declaratory Ruling Stating that the Sale of Non-Aggregate Call Records by Telecommunications Providers without Customers' Consent Violates Section 222 of the Communications Act, WC Docket No. 13–306 (filed Dec. 11, 2013). We do not believe that the use and disclosure of such information would fall under the exception for use and disclosure of aggregate customer data enumerated in Section 222(c)(3), because by definition aggregate data must be collective data. Do commenters agree? Does Section 222 require us to conclude that all CPNI should be considered individually identifiable unless it meets the definition of aggregate, *i.e.,* is both de-identified and collective? Does the use and disclosure of such information then fall under the general use and disclosure prohibitions of Section 222(c)(1)? Does Section 222(a) provide the Commission authority to adopt privacy protections regarding all such data that is customer PI? We seek comment whether de-identified but non-collective data should be subject to the proposed opt-out and opt-in customer consent requirements described above.

148. We seek comment on whether we should, for the sake of harmonization, apply our proposed rules for BIAS providers' use and disclosure of, and access to, aggregate customer proprietary information to all other telecommunications carriers. Likewise, should we adopt rules harmonizing the treatment of aggregate information by cable and satellite providers with the treatment of aggregate information by telecommunications carriers? We note that neither Section 222 nor the Commission's currently existing implementing rules explicitly restrict carriers' use of aggregate customer PI. However, as noted above, as technology has evolved, information that previously appeared to be aggregate may no longer be. We think this is true whether a company offers voice telephony or BIAS. Providers, researchers, and others make valuable use of aggregate customer information, but this use must comport with contemporary understandings of how to ensure the information is aggregate information and not re-identifiable. Accordingly, we ask commenters to explain whether our proposed rules should apply to all providers regardless of the technology used to provide service.

E. Securing Customer Proprietary Information

149. Strong data security protections are crucial to protecting the confidentiality of customer PI. As the FTC has observed, there is "widespread evidence of data breaches and vulnerabilities related to consumer information," and such incidents "undermine consumer trust, which is essential for business growth and innovation." Therefore, to protect confidential customer information from misappropriation, breach, and unlawful disclosure, we propose robust and flexible data security requirements for BIAS providers. We propose both a general data security requirement for BIAS providers and specific types of practices they must engage in to comply with the overarching requirement.

150. Our proposal to adopt a general standard and identify specific activities the provider must engage in to comply with that standard is informed by existing federal data security laws and regulations and proposed best practices that recognize that privacy and security are inextricably linked and require affirmative safeguards to protect against unauthorized access of consumer data. In proposing this two-step approach to data security we look to HIPAA and its implementing regulations, GLBA and its implementing regulations, the FTC's best practices guidance, FTC and FCC settlements of specific data security investigations, and state laws.

151. Specifically, we propose to require BIAS providers to protect the security and confidentiality of all customer proprietary information from unauthorized uses or disclosures by adopting security practices calibrated to the nature and scope of the BIAS provider's activities, the sensitivity of the underlying data, and technical feasibility. To ensure compliance with this obligation, we propose to require BIAS providers to, at a minimum, adopt risk management practices, institute personnel training practices, adopt customer authentication requirements, identify a senior manager responsible for data security, and assume accountability for the use and protection of customer PI when shared with third parties. In addition, we seek comment on whether we should also include data minimization, retention, and destruction standards in any data security regime we adopt. Finally, we seek comment on harmonizing the data security requirements for BIAS providers and those for voice providers, and on adopting harmonized data security requirements for cable and satellite providers.

1. General Standard

152. We believe that Section 222(a) requires BIAS providers to protect the security, confidentiality, and integrity of customer PI that such BIAS provider receives, maintains, uses, discloses, or permits access to from any unauthorized uses or disclosures, by adopting security practices appropriately calibrated to the nature and scope of the BIAS provider's activities, the sensitivity of the underlying data, and technical feasibility. We propose to adopt a rule codifying this obligation. We seek comment on this proposal.

153. Data security is one of the core principles of the FIPPs. The FIPPs call for organizations to protect personal information "through appropriate security safeguards against risks such as loss, unauthorized access or use, destruction, modification, or unintended or inappropriate disclosure." As a result, numerous federal and state laws have adopted general data security requirements for the entities they cover. The Satellite and Cable Privacy Acts, for example, require cable and satellite operators to "take such actions as are necessary to prevent unauthorized access to [personally identifiable] information by a person other than the subscriber or cable operator [or satellite carrier]." HIPAA requires the adoption of security regulations to protect the integrity,

confidentiality, and availability of electronic health records that are held or transmitted by covered entities. Similarly, the Safeguards Rule, adopted by the FTC to implement GLBA, requires financial institutions under the FTC's jurisdiction to "[i]nsure the security and confidentiality of customer information"; "[p]rotect against any anticipated threats or hazards to the security or integrity of such information"; and "[p]rotect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer."

154. Our proposal is also consistent with the approach that the FTC has taken in providing guidance on best practices for all companies under its jurisdiction, and in using the "unfairness" prong of Section 5 of the FTC Act in its enforcement work. The FTC has taken enforcement action in cases where companies have failed to take "reasonable and appropriate" steps to protect consumer data, including several dozen cases against businesses that failed to protect consumers' personal information. It is also worth noting that a number of states have enacted legislation requiring regulated entities to take reasonable measures to protect and secure personal data from unauthorized use or disclosure.

155. We seek comment on how we should interpret the terms "security, confidentiality, and integrity" in our proposed overarching data security requirement. For example, the HIPAA implementing rules define confidentiality as "the property that data or information is not made available or disclosed to unauthorized persons or processes" and integrity as "the property that data or information have not been altered or destroyed in an unauthorized manner." Conversely, while the GLBA requires organizations to "insure the security and confidentiality of customer records and information," it does not separately define the terms "security" and "confidentiality." We seek comment whether we should define these terms and, if so, how we should define them. Are these terms already firmly established in the data security context and in other laws or should we rely on some other definition? Do these terms indicate three separate duties under Section 222, or are they all elements of the single, overarching duty under our proposed data security requirements? Further, to the extent that we determine that contents of customer communications may be considered CPNI, PII, or neither, how can we ensure that broadband providers appropriately protect such information?

2. Protecting Against Unauthorized Use or Disclosure of Customer PI

156. To ensure BIAS providers comply with our proposed overarching requirement to protect the security, confidentiality, and integrity of customer PI, we propose in this section to require every BIAS provider to:

- Establish and perform regular risk management assessments and promptly address any weaknesses in the provider's data security system identified by such assessments;
- Train employees, contractors, and affiliates that handle customer PI about the BIAS provider's data security procedures;
- Ensure due diligence and oversight of these security requirements by designating a senior management official with responsibility for implementing and maintaining the BIAS provider's data security procedures;
- Establish and use robust customer authentication procedures to grant customers or their designees' access to customer PI; and
- Take responsibility for the use of customer PI by third parties with whom they share such information.

157. This proposed data security framework is intended to be robust and flexible and to help ensure that BIAS providers protect the confidentiality of their customers' information, and enhance their customers' ability to effectively decide under what circumstances the BIAS provider should use and share customer confidential information. As discussed in more detail below, it is also consistent with a variety of federal laws and regulations, and best practices. We seek comment on this proposed framework.

158. In order to allow flexibility for practices to evolve as technology advances, while requiring the regulated entities to install protocols and safeguards that are available and economically justified, we propose not to specify technical measures for implementing the data security requirements outlined below. This follows the regulatory approaches taken at other federal agencies. We believe this approach will encourage BIAS providers to design security measures that can easily adapt to new and different technologies. We seek comment on this approach.

159. Are there additional data security obligations that would help to ensure the security, confidentiality, and integrity of customer PI? Are any of our proposed requirements not needed? We recognize that most BIAS providers already have robust data security measures in place. To what extent are some or all BIAS providers already engaged in these or other data security measures? What are the costs involved with each element of our proposal, and of any other proposed elements? Are there any costs or burdens unique to small entities? How would the security measures contemplated under our proposed rules impact small businesses? We also seek comment on whether there are alternative actions that BIAS providers could employ to meet the same goals.

160. We also seek comment whether we should establish safe harbors or convene stakeholders to establish best practices similar to NTIA's privacy multi-stakeholder processes. If we were to undertake a similar multi-stakeholder process, how could we facilitate the success of such a process? How could we ensure that any developed best-practices evolved over time?

161. Alternatively, we seek comment on whether we should prescribe specific administrative, technical, and physical conditions that must be included as part of a BIAS provider's plan to secure customer proprietary information. Would prescribing specific, technologically-motivated security measures unnecessarily limit additional protective measures that a BIAS provider would otherwise implement instead of, or in addition to, the prescribed measures? Would specific data security measures reduce BIAS providers' incentives to be more innovative with security or have an impact on competition, assuming BIAS providers compete on the level of security employed? How would having specific security measures help or hamper enforcement efforts? Below we invite comment on each of the areas that we propose to require BIAS providers to incorporate into their data security practices.

a. Risk Management Assessments

162. To help identify and protect against risks to the security, confidentiality, and integrity of customer PI, we propose requiring BIAS providers to establish and perform regular risk management assessments and promptly remedy any security vulnerabilities identified by such assessments. In combination with the other safeguards we propose today, we believe that regular risk management assessments will help enable BIAS providers to adequately protect customer PI from reasonably foreseeable risks to the data's security, confidentiality, and integrity. We propose to allow each BIAS provider to

determine the particulars of and design its own risk management program, taking into account the probability and criticality of threats and vulnerabilities that may impact the confidentiality of customer PI used, disclosed, or maintained by the BIAS provider. We seek comment on our proposal and rationale.

163. Our proposal aligns with the data security process established under GLBA, which requires financial institutions to perform risk assessments to "[i]dentify reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of customer information" in their possession. Similarly, under the Security Rule, implementing HIPAA, organizations must "[i]mplement policies and procedures to prevent, detect, contain, and correct security violations," which includes a requirement for risk analysis. The HIPAA Security Rule also requires that, as part of the risk analysis, covered organizations "conduct an accurate and thorough assessment of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of electronic protected health information held by the [organization]." We base our proposal on these well-established frameworks and seek comment on whether there are additional models or frameworks we should consider. Should we require technical audits such as penetration tests, given concerns about the adequacy of survey-based risk assessments? Are there any elements that would be inapplicable in the broadband context?

164. Alternatively, we seek comment whether we should specify the manner in which the risk management assessments should be designed and conducted instead of allowing the BIAS provider to determine the specifics. HIPAA risk analyses under the Security Rule must include: The scope of the analysis, data collection, identification and documentation of potential threats and vulnerabilities, assessment of current security measures, determination of the likelihood and potential impact of the threat occurrence, determination of the level of risk, and documentation of these efforts. We seek comment on whether we should follow a similar approach and impose specific risk management requirements on BIAS providers. Or, should we instead establish a safe harbor with specific criteria to be included in a risk management assessment in order to qualify for the safe harbor? Under either circumstance, what should the specific requirements be?

165. We also seek comment on whether we should define "regular" as part of the "regular risk assessment" requirement. If so, how often should we require BIAS providers to conduct risk assessments? Should the required frequency of risk assessment differ based on the sensitivity of the underlying information?

166. Finally, to ensure the effectiveness of the risk management assessments, we propose that a BIAS provider should be required to promptly remedy any data security vulnerabilities it identifies through such assessments. We seek comment on this proposal. Should we define "promptly" as part of the requirement to "promptly address" any weaknesses identified? If so, what would be a reasonable amount of time to qualify as "promptly" to adequately protect customers while allowing the BIAS provider an opportunity to react appropriately to the security risk at hand?

b. Employee Training To Protect Against Unauthorized Use or Disclosure of Customer PI

167. We also propose to require BIAS providers to protect against unauthorized uses or disclosures of customer PI by training their employees, agents, and contractors that handle customer PI on the data security measures employed by the BIAS provider and by sanctioning any such employees, agents, or contractors for violations of those security measures. Data security training is well recognized as a key component of strong data security practices. A training requirement is a well-established part of the Commission's treatment of CPNI for voice providers. The Commission adopted a personnel training safeguard as part of its original 1998 CPNI rules, requiring that carriers train all employees with access to customer records as to when they can and cannot access CPNI and that they maintain internal procedures for managing employees that misuse CPNI. In its data security consent orders, the Enforcement Bureau has also adopted training requirements to help "ensure that consumers can trust that carriers have taken appropriate steps to ensure that unauthorized persons are not accessing, viewing or misusing their personal information." We seek comment on our proposal and our rationale.

168. Our proposal also aligns with the FTC's rules implementing GLBA, which requires staff training as part of a covered entity's security program as well as taking steps to ensure that their affiliates and service providers safeguard customer information in their care. The rules implementing HIPAA also require data security training, although those rules are focused on the employees of a covered entity and not its agents or contractors.

169. The existing training programs required by the HIPAA and GLBA rules do not specify all the topics that must be included under the training program, nor do they mandate the frequency or length of training. We seek comment whether we should follow this approach or provide further clarifications on the training process. We also seek comment whether we should require training be done on an annual basis or with some other specified frequency, or establish a minimum frequency. Are there additional entities to which these training requirements should apply?

c. Ensuring Reasonable Due Diligence and Corporate Accountability

170. To ensure that BIAS providers have a robust data security program that includes any requirements that we ultimately adopt, we propose requiring BIAS providers to designate a senior management official with responsibility for implementing and maintaining the BIAS provider's information security program to ensure that someone with authority in the company has personal knowledge of and responsibility for the BIAS provider's data security practices. As with the other data security requirements we propose, this proposal is firmly rooted in existing privacy regimes. For example, the HIPAA rules require each covered entity to designate a privacy official.

171. In fact, since the Commission first promulgated its CPNI rules, corporate oversight has been included as part of the data security requirements. As the Commission explained, having a corporate officer attest to having personal knowledge of the carrier's data security compliance is "an appropriate and effective additional safeguard." We seek comment on our proposal to require BIAS providers to designate a senior management official to implement and maintain the provisions of the BIAS providers' data security procedures. We recognize that many BIAS providers currently have senior officials responsible for privacy and data security and seek comment on the burden of this requirement, in light of BIAS providers' existing management and compliance structures.

172. We also seek comment whether we should require additional information or verification measures as part of this requirement for oversight. For example, should we specify qualifications that a senior management

official should or must have to serve in this capacity? Are there any other specifications that we should or should not include as part of this requirement?

d. Customer Authentication Requirements for Access to Customer Proprietary Information

173. To honor customers' rights to access their personal information while ensuring that BIAS providers comply with their duty to safeguard confidential customer data, we propose to require BIAS providers to adopt robust customer authentication requirements. We seek comment on whether we should require providers to use, at a minimum, a multi-factor authentication before granting a customer access to the customer's PI or before accepting another person as that customer's designee with a right to access a customer's PI. We also propose to require BIAS providers to notify customers of account changes to protect against fraudulent authentication attempts. Relatedly, we also seek comment on the methods by which consumers should be allowed to access their customer PI and whether we should adopt rules requiring BIAS providers to correct inaccurate customer PI.

(i) Robust Authentication Requirements

174. In order to protect against unauthorized access to customer PI, we propose to require BIAS providers to adopt robust customer authentication and we seek comment on requiring the use of multi-factor authentication. We believe that customer authentication is a critical element in ensuring that the confidentiality of customers' PI is protected. We seek comment on our proposals.

175. We do not currently propose to require BIAS providers to adopt multi-factor authentication or, more granularly, specific types of multi-factor authentication methods, because we recognize that there is no perfect and permanent approach to customer authentication. Technology develops over time. Multi-factor authentication requires users to authenticate through multiple elements in order to prove one's identity, under the assumption that it is unlikely that an unauthorized actor will be able to succeed at more than one form of authentication. We understand that currently used authentication mechanisms vary by company, by industry, and often by the sensitivity of the underlying data. Types of authentication credentials currently fall into one of three categories: (i) Something people know, such as a password or a personal identification number (PIN); (ii) something people possess, such as a token or access key; and (iii) something people are, such as biometric information based on typing patterns or fingerprints. Multi-factor authentication typically combines at least two of these categories, requiring, for example, that users provide a password in addition to an access key code that is maintained on a separate device. As a result, multi-factor authentication is widely considered to be one of the most secure authentication methods currently available.

176. We seek comment on the advantages and disadvantages of requiring multi-factor authentication. Are there security risks associated with multi-factor authentication that we should take into account? How would consumers be affected by a multi-factor authentication requirement? What would be the additional costs imposed on BIAS providers and/or consumers? If a cell phone number or email address is used to provide new information after authentication, how can the provider be certain that neither has been compromised? Are there customers that would not be able to take advantage of a multi-factor authentication process based on lack of access to specific types of technology? If so, what alternatives should be available, and should we require providers to make these alternatives available? Would a multi-factor authentication requirement unduly burden small providers? How would a multi-factor authentication regime work for interactions that are off-line, *i.e.,* in-person access to customer PI via a face-to-face interaction at the BIAS provider's regional offices or via a telephone call? Are there specific issues with respect to multi-factor authentication and customers with disabilities that we should take into account?

177. We seek comment on other robust methods of customer authentication. FTC guidance encourages "[c]ompanies engaged in providing data for making eligibility determinations [to] develop best practices for authenticating consumers for access purposes," and highlights the security work of the private sector such as Payment Card Institute Data Security Standards for payment card data, the Better Business Bureau, and the Direct Marketing Association that developed and implemented best practices for authenticating consumer accounts. Further, NIST's cybersecurity standards recommend authentication standards based on risk models, noting that "the level of authentication required for online banking is likely to differ from that required to access an online magazine subscription." We seek comment on application of these authentication practices and standards to the relationship between BIAS providers and their customers, as well as the benefits and drawbacks of adopting any of these methods as requirements in the broadband context. Are there any authentication methods being used that we should discourage or even prohibit because they are outdated, present their own privacy or data security risks, are unworkable for people with certain types of disabilities, or for other reasons? For example, do authentication methods that rely on additional, less mutable, personal information, such as fingerprints or other biometric information, raise particular concerns in the case of a breach of that personal information or other scenarios? Would BIAS providers need to employ additional safeguards to secure this authentication-specific information? Should our rules prohibit BIAS providers from requiring their customers to provide biometric information as part of any authentication scheme?

178. We also seek comment on whether we should require password protection. Our existing voice rules rely on authenticating customers based on a password the customer must establish before seeking to obtain call-detail information over the telephone or via online access. These measures were implemented to address the problem of pretexting, where parties pretend to be a particular customer or other authorized person in order to obtain access to that customer's call detail or other private communications records.

179. However, given the frequency with which passwords are compromised due to phishing attacks, password database leaks, and reuse of passwords across multiple Web sites and service offerings, we have concerns whether a password is a sufficient safeguard when a customer requests access to customer PI over a customer-initiated phone call or via online access in the broadband context. We seek comment generally on the efficacy of password authentication in this context. If commenters agree that password protection should be part of a robust customer authentication mechanism, should we prescribe additional requirements, such as mandating the use of secret questions or character limitations on passwords? Or should we establish a particular standard with respect to password protection and leave it up to the provider to determine the best way to meet that standard?

180. We also seek comment whether we should adopt specific authentication

procedures for particular scenarios, as our existing Section 222 rules do with respect to customer authentication over a telephone call, or should instead adopt a flexible system like that which we propose for data security measures. If the former, what should such authentication procedures be, and under what scenarios should they be required? What are the advantages and disadvantages of each regime? What are the implications for BIAS providers of requiring a particular type of authentication measure? Would adopting a particular authentication model or practice stifle development of new technologies that may provide improved security, or possibly provide a specific target for bad actors to work around, in effect making the practice less effective as a security precaution? We also seek comment on how to ensure that any ultimate authentication requirement we adopt is flexible enough to incorporate and encourage the latest technological advances.

181. We also seek comment on whether there are other authentication methods that BIAS providers can employ to make the authentication process less cumbersome for consumers. For example, are there ways for BIAS providers to work with existing edge providers that already authenticate their users to simplify customer authentication? Allowing third-party credentials can save time and resources in managing identities for both customers and businesses. The benefits to organizations and individuals can be significant, but there is also a concern that these connections meant to improve security can create opportunities for increased tracking of users. We seek comment whether and how the proposed rules should and can accommodate such innovations.

182. Finally, we seek comment on whether we should harmonize the existing authentication requirements for voice providers with the authentication method we ultimately adopt for BIAS providers. Do the existing voice authentication rules, with their emphasis on passwords following a customer-initiated request, continue to be both relevant and effective? Should we update these rules to require robust customer authentication similar to what we propose for BIAS? Why or why not? Are there other steps we should take to harmonize the authentication requirements for voice and BIAS providers? Are there specific customer authentication rules we should adopt for cable and satellite providers in light of their obligation to prevent unauthorized access to a subscriber's personally identifiable information? In addition, we seek comment on whether we should adopt employee and contractor authentication requirements to permit access to customer PI. If so, what standards should we adopt?

(ii) Notification of Account Changes

183. We also propose requiring BIAS providers to notify customers of account changes, and attempted account changes, as an additional check against fraudulent account access. The change notification requirement we propose today is similar to the requirement under our existing Section 222 rules, which requires carriers to "notify customers immediately whenever a password, customer response to a back-up means of authentication for lost or forgotten passwords, online account, or address of record is created or changed." As the Commission explained in 2007, account change notification is an important tool that allows customers to monitor their accounts' security and protects customers from data thieves that might otherwise manage to circumvent a provider's authentication protections.

184. We recognize that notifying customers of account changes is a best practice already followed by many BIAS providers, as well as other companies operating in the broadband ecosystem. We seek comment, particularly those which are grounded on practical experience, on how our proposal for notification of account changes can be implemented with minimal burdens to customers and BIAS providers. How can we ensure that our proposal does not result in customer "notice fatigue," lessening the usefulness of notices? Similarly, how can we ensure that notice requirement does not impose an undue burden on BIAS providers, particularly smaller providers? When sending an authentication notice, should BIAS providers be required to send the notification to another form of customer contact information than what is listed as the point of contact for any multi-factor authentication mechanism? What if a customer has only one means of being immediately notified (*i.e.*, a phone number but no email address)? How can BIAS providers be sure that they are sending the authentication notification to the correct customer and not the bad actor attempting to fraudulently authenticate the customer account? Are there other potential risks and benefits from this proposal we should consider?

185. We also propose to require BIAS providers to notify customers when someone has unsuccessfully attempted to access the customer's account or change account information. Providing such notice will alert the customer of possible data breach attempts. We seek comment on this proposal. Might it risk additional customer notice fatigue? Do the benefits outweigh the burdens?

186. We also seek comment on whether we should harmonize our account change notification requirements for voice and BIAS providers. Are there reasons that customer change notification regimes should be different for voice and BIAS providers? Should we have harmonized account change notification requirements for cable and satellite providers?

(iii) Right To Access and Correct Customer Data

187. We also seek comment on whether to adopt rules requiring BIAS providers to provide their customers with access to all customer PI in their possession, including all CPNI, and a right to correct that data. Access and correction rights are one of the FIPPs. We ask commenters to address how we can best balance the benefits of providing customers with access and the right to correct their personal information without imposing undue burdens on BIAS providers that collect such data.

188. As we consider these questions, we seek comment on the different forms that customer PI could take when collected and retained by broadband providers, and whether these different types of information may require different customer access regimes. For example, if BIAS providers possess customer PI in a machine-readable format, should they be required to provide customers with access to such data in a different form? What are the burdens likely to be associated with such a requirement? Are there certain sensitive classes of customer PI, such as search and browsing history or location data, that a BIAS customer should always have the ability to access? Alternatively, are there certain classes of customer PI that are inherently not sensitive, or fundamentally technical, thereby decreasing consumers' interest in obtaining disclosure of such data? Recognizing that there are economic costs associated with any disclosure regime, how should we take into account any competitive effects that may flow from the development of customer access rules applicable to broadband providers? We note that edge providers, data brokers, and other entities in the Internet ecosystem also collect, process, retain, and distribute large quantities of sensitive consumer data. Should we consider the restrictions, or lack thereof, that are

currently placed on edge providers or other entities in crafting rules for broadband providers?

189. We observe that, while the Cable and Satellite Privacy Acts explicitly provide a mechanism for subscribers to correct their personal information, Section 222 does not, and our current CPNI rules contain no such provision. How should this impact our assessment of whether to incorporate a right to correct customer PI into our broadband rules? What economic burdens or other risks would accompany application of this right to the information collected by broadband service providers? What are the data security risks that would attend customer access rights? On the other hand, what consumer protection benefits are likely to result from codifying a right to correct customer PI?

190. Relatedly, we recognize that Section 222(c)(2) grants the right of access to CPNI to "any person designated by the customer." However, our existing CPNI rules do not currently contain any special provisions for voice customers to authorize third party access to their CPNI. Are such regulations necessary in the broadband context? If so, are they also necessary in the voice context? Should we harmonize our BIAS and voice services rules with respect to rights of access to customer PI?

191. If we do adopt rules requiring providers to make customer PI accessible to customers, should we also adopt rules requiring BIAS providers to give their customers clear and conspicuous notice of their right of access, along with a simple, easily accessible method of requesting their customer PI? How should such notice and access be structured? If we do adopt right of access rules, how should we ensure that customers with disabilities achieve the same level of access? If we do adopt such rules for BIAS providers, should we adopt rules harmonizing cable and satellite rights of access obligations under Sections 631 and 338(i)?

e. Accountability for Third Party Misuse of Customer PI

192. We seek comment on how best to ensure that the security, confidentiality, and integrity of customer PI is protected once a BIAS provider shares it with a third party and it is out of the BIAS provider's immediate control. Our goal is to promote customers' confidence that their information is secure not only with their BIAS provider, but also with anyone with whom the customer has provided approval for the BIAS provider to share his or her data. Consumers may be apprehensive about disclosing their personal information to BIAS providers if they cannot trust that their data will not be misused downstream. They may also be less likely to provide consent via an opt-out or opt-in mechanism if that information will no longer be protected in the recipients' hands. As the Commission has previously found, "[i]n the absence of" downstream safeguards, "the important consumer protections enacted by Congress in Section 222 may be vitiated by the actions of agents." We believe that these risks are even greater in the broadband context than the voice telephony context because of the vast wealth of sensitive personal information handled by BIAS providers and exchanged through broadband Internet access services.

193. We believe that Section 222(a) requires BIAS providers to ensure the confidentiality of customer PI when shared with third parties. The Commission has held that "a carrier's Section 222 duty to protect CPNI extends to situations where a carrier shares CPNI with its joint venture partners and independent contractors" and has held carriers accountable for privacy violations of such third parties. Some economic literature suggests that holding a provider vicariously liable would maximize their incentives to ensure the data is protected. What are the benefits and drawbacks of holding providers accountable for the data security practices of its contractors, joint-venture partners, or any other third parties with which it contracts and shares customer PI? We seek comment on that approach. Is it too stringent? Should BIAS providers be held accountable for third party recipients' handling of customer PI for the entire lifecycle of the data or for a more limited duration?

194. Another way BIAS providers can help to ensure that third parties protect customer data shared by the BIAS provider is to obtain contractual commitments from third parties to safeguard such data prior to disclosing customer PI to those third parties. Such safeguards are a fundamental part of the best practices guidance the FTC provides to companies about data security practices. In the past, the Commission recognized that telecommunications services providers can protect against third party misuse through their own private contract arrangements. Should we follow that example here? Or, should we require BIAS providers to obtain specific contractual commitments from third party recipients of customer PI to ensure the protection of such data? If so, what should such contracts include? Should the third party commit to, for example, (1) limit the use and disclosure of customer PI to the specific purpose for which the provider shared the customer PI with the third party and to which the customer provided approval; (2) take precautions to protect the customer PI from unauthorized use, disclosure, or access; (3) train its employees on the provisions of its information security program and monitor compliance; (4) follow the same data security requirements that we adopt for BIAS providers; (5) follow the data breach notification procedures we adopt for BIAS providers; (6) notify the BIAS provider of any breach of security involving customer PI as expeditiously as possible and without unreasonable delay; (7) institute data retention limits and minimization procedures; and/or (8) document of compliance with these contractual commitments, including records of the use and/or disclosure of customer PI, as appropriate? What are the benefits and burdens of each of these options, in particular on small providers, and would the benefits of such obligations outweigh the burdens associated with compliance?

195. Relatedly, we seek comment on whether we should require mobile BIAS providers to use their contractual relationship with mobile device or mobile operating system (OS) manufacturers that manufacture the devices and hardware that operate on the mobile BIAS provider's network to obtain the contractual commitments described above. How do providers' contracts with device manufacturers and mobile OS manufacturers currently handle the treatment of customer PI? What would be the benefits and drawbacks of imposing security-specific obligations in those contracts?

196. Finally, we seek comment on other alternatives that we should consider regarding BIAS provider accountability for downstream privacy violations, as well as whether we should take any actions to either harmonize or distinguish our proposal from the existing voice CPNI rules.

f. Other Safeguards

197. In addition to the safeguards we propose above, we seek comment on whether there are other safeguards that BIAS providers should employ to protect against reasonably anticipated unauthorized use or disclosure of customer PI by the BIAS provider, its employees, agents, and contractors. For example, we seek comment on whether restricting access to sensitive data; setting criteria for secure passwords; segmenting networks; requiring secure access for employees, agents and

contractors; and keeping software patched and updated would be useful security measures to reduce the probability of threats. If so, should we require them? If not, what other security measures should we consider?

198. In addition we seek comment whether we should require or encourage BIAS providers to use standard encryption when handling and storing personal information. The FTC established best practices for maintaining industry-standard security, SSL encryption among them, which it considers to be a "reasonable and appropriate" step to secure user data. Should we mandate that customer PI be encrypted when stored by BIAS providers?

3. Factors for Consideration in Implementing Proposed Customer Data Security Measures

199. In determining how to implement the data security requirements outlined above, we believe that a BIAS provider should, at a minimum, take into account the nature and scope of the BIAS provider's activities and the sensitivity of the underlying data, and we propose to codify it as a rule. We derive our proposal from existing privacy statutes and frameworks, including the GLBA and the FTC's Privacy Framework. Our proposed approach also mirrors our existing CPNI rules for voice providers, which permit telecommunications carriers to individually determine the specific "reasonable measures" that will enable them to comply with the general duty to discover and protect against unauthorized access to proprietary information. We seek comment on our proposal.

200. We believe that Section 222(a) requires BIAS providers to, at a minimum, consider these factors when designing their safeguards to protect the confidentiality, integrity, and security of customer PI, and we seek comment on the inclusion of these factors and whether there are additional factors that we should consider. What are the benefits and drawbacks of such an approach to customers and BIAS providers? Would any of the factors discussed below not be considered "reasonable" in the broadband context? How does such an approach conform to existing industry standards? Does such an approach allow for sufficient innovation and flexibility as technology advances?

201. *Nature and Scope of BIAS Provider Activities.* We propose that any specific security measures employed by a BIAS provider should take into consideration the nature and scope of the BIAS provider's activities. We believe this sliding scale approach affords sufficient flexibility for small providers while still protecting their customers. The Commission has previously explained that "privacy is a concern which applies regardless of carrier size or market share." However, we recognize that the same data security protections may not be necessary in all cases. For example, a small provider with only a few customers may not store, use, or disclose customer PI in the same manner as a large provider. In such a case, what constitutes a "reasonable" safeguard might be different.

202. *Sensitivity of Customer PI.* We also propose that the security measures a BIAS provider employs should consider the sensitivity of the underlying customer PI. This sliding scale approach follows the FTC's proposed Privacy Framework, which includes a recommendation for allowing consumers to access the data companies maintain on them, with the level of access "proportionate to the sensitivity of the data and the nature of its use." Likewise, NIST also ranks the sensitivity of PII on different "impact levels," ranging from low, moderate, or high, based on the effect of the disclosure of the underlying information. We seek comment on this proposal and our rationale for it.

4. Limiting Collection, Retention, and Disposal of Data

203. The more customer information that a BIAS provider maintains, and the more sensitive that information is, the stronger the data security measures a BIAS provider will need to employ to protect the confidentiality of that information. In this section, we seek comment on data minimization, including whether we should impose reasonable data collection and retention limits. We also seek comment on whether we should prescribe specific data destruction policies as part of any data retention limits.

a. Limiting Collection of Sensitive Customer Information

204. We seek comment on whether we should adopt rules limiting BIAS providers' collection of sensitive customer information, or providing customer control over the collection of such information. The FIPPs indicate that "[o]rganizations should only collect PII that is directly relevant and necessary to accomplish the specified purpose(s) and only retain PII for as long as is necessary to fulfill the specified purpose(s)." We recognize that while the Cable and Satellite Privacy Acts prohibit operators from using the cable or satellite systems to collect PII concerning any subscriber without the prior written or electronic consent of the subscriber concerned, Section 222 does not contain an analogous provision regarding the collection of customer information. Likewise, the Commission's existing privacy rules do not contain any blanket limitations on the ability of communications service providers to collect certain types of customer data.

205. We seek comment on whether we should adopt *ex ante* rules regulating the collection of customer data by broadband service providers. We recognize that declining data storage costs may mean that customer data, once collected, can be retained indefinitely. This in turn may present data security risks that impact a provider's obligation to protect customer data pursuant to Section 222(a).

206. We seek comment on the effect of unrestricted data collection practices on data security, as well as the relationship to the concept of privacy-by-design. If we do adopt rules restricting the types of data BIAS providers can collect, will there be negative societal consequences? For example, data collected in conjunction with other online services has yielded services such as spam filters that use a variety of data for "machine learning." Are there particular types of customer data, such as health information, that a provider should be prohibited from collecting? Could such a requirement be implemented and operationalized without undue burden? Is it possible for a BIAS provider to reasonably distinguish between types of data that it collects such that it could comply with such a requirement?

b. Data Retention Limits

207. Similarly, we seek comment on whether we should require BIAS providers to set reasonable retention limits for customer PI. If so, what should those retention limits be? Data retention limits can also reduce the burden of data security. Limiting data retention is also one of the seven principles of the FIPPs. Many privacy-by-design regimes, where consumer privacy is built into every stage of product development, include data retention limitations as a fundamental part of their designs. FTC guidance emphasizes the importance of data retention limits, recommending that entities retain customer data only as long as necessary for the legitimate purpose for which it was collected with the caveat that retention periods "can be

flexible and scaled according to the type of relationship and use of the data."

208. The FTC recommends that data retention periods should be based on the underlying nature of protected information, suggesting that data relating to children should have a shorter retention period than data relating to adults. The Cable and Satellite Privacy Acts require entities to destroy personal data if the information is no longer necessary for the purpose for which it was collected, and the Video Privacy Protection Act requires records with protected information to be destroyed as soon as practicable. While these limits are often contextually based on what is "reasonable" for a particular use or industry, there are circumstances where long term retention of customer data is unlikely to be reasonable. Should we adopt rules harmonizing data retention requirements for telecommunications carriers with those provided for cable and satellite providers under Sections 631 and 338(i)?

209. We seek comment whether it would be appropriate to apply any of these standards in the broadband context. Why or why not? Are there other data retention policies utilized by industry that we should look to as a guide? We also seek comment whether we should adopt a specific timeframe or a flexible standard for data retention by BIAS providers. For example, should we adopt a specific retention period for customer data upon termination of the broadband service and the carrier-customer relationship (*i.e.*, a former customer)? Should the same data retention standard apply to a BIAS provider's retention of customer PI for existing customers? What should be the appropriate retention period if someone merely completes the information form for a service but does not obtain that service?

210. Should we adopt different data retention limits for different categories of data? If so, how should we define those categories of data, and what would those retention periods be? For example, should a separate standard exist for data that has been de-identified? In addition, how could we ensure any retention periods are sufficiently flexible to accommodate requests from law enforcement or legitimate business purposes?

211. On the other hand, we recognize that some data retention can be beneficial. Historic data can be useful to individuals and serve broader social goals. For example, as the FTC Staff Report on Privacy explains, data retention limits could limit innovation by requiring the destruction of data that could be used in the future to develop new products that can potentially benefit customers. We seek comment on whether and how our rules should take into account these potential benefits of data retention.

c. Destruction of Customer Proprietary Information

212. We also seek comment whether we should implement specific measures for BIAS providers when disposing of customer PI. Alternatively, we seek comment whether we should establish a general data destruction requirement but allow industry to determine best practices for data disposal in this area. What types of data destruction practices do BIAS providers currently abide by? What are the current industry standards, if any?

213. We seek comment on whether we should adopt data destruction requirements and, if so, how sensitive data should be disposed of when it is no longer needed. Should we follow the model laid out by the Fair and Accurate Credit Transactions Act (FACTA), which requires the proper disposal of information contained in consumer reports and records? Under the FTC disposal rule, which implements FACTA with respect to companies under the FTC's jurisdiction, companies must "tak[e] reasonable measures to protect against unauthorized access to or use of [consumer] information in connection with its disposal." The rule offers a non-exhaustive list of such reasonable measures that includes burning, pulverizing, or shredding paper so that they are unreadable and cannot be practicably reconstructed and destroying or erasing electronic media such that it cannot be practicably read or reconstructed. Should we take a similar approach here? Several states have also enacted laws regarding the disposal of records that contain personal information. Should we look to any such state laws for guidance?

214. We also seek comment on the potential costs and correlating burdens of imposing such requirements. Would the requirements be particularly costly or burdensome for small BIAS providers? Could the costs of a data destruction program be absorbed by the BIAS provider or would any additional cost be passed on to customers? Is there a meaningful way to quantify the privacy benefits to consumers to justify any additional costs or benefits? Is there a way for BIAS providers to ensure that a customer's data has been properly disposed of and communicate that to the customer? If we adopt data destruction requirements for BIAS providers, should we also adopt them for voice providers?

F. Data Breach Notification Requirements

215. In order to encourage providers to protect the confidentiality of customer proprietary information, and to give consumers and law enforcement notice of failures to protect such information, in this section, we propose data breach notification requirements for BIAS providers and providers of other telecommunications services. The importance of customer and law enforcement notification in the event of a data breach is widely recognized. Our existing Section 222 rules impose data breach obligations on voice providers; 47 states, the District of Columbia, Guam, Puerto Rico and the Virgin Islands have adopted data breach notification laws; and the FTC has repeatedly testified in support of federal data breach legislation. The rules we propose today seek to incorporate the lessons learned from existing and proposed data breach notification frameworks, while addressing the extensive sets of customer data available to providers of telecommunications services, and our role in helping to identify and protect against network vulnerabilities.

216. We propose and seek comment on specific data breach notification requirements for providers of telecommunications services. We think harmonizing these requirements is a common-sense approach to ensuring that customers of all telecommunications services, the Commission, and other federal law enforcement receive timely notice of data breaches of customer PI. We structure these proposals with the goal of ensuring that affected customers, the Commission, and other federal law enforcement agencies receive timely notice of data breaches so they can take appropriate action to mitigate the impact of such breaches and prevent future breaches. Specifically, we propose that in the event of a breach carriers shall:

- Notify affected customers of breaches of customer PI no later than 10 days after the discovery of the breach, subject to law enforcement needs, under circumstances enumerated by the Commission.
- Notify the Commission of any breach of customer PI no later than 7 days after discovery of the breach.
- Notify the Federal Bureau of Investigation (FBI) and the U.S. Secret Service (Secret Service) of breaches of customer PI reasonably believed to relate to more than 5,000 customers no

later than 7 days after discovery of the breach, and at least 3 days before notification to the customers.

217. We discuss and seek comment on each of these proposals in detail below, but as an initial matter we seek comment on our proposals generally. Below, we first discuss our requirements for notifying customers and federal law enforcement of data breaches. We also seek comment on what information should be provided to customers and law enforcement as part of the data breach notification, whether we should impose record keeping requirements with respect to data breach notification, and whether we should, in fact, harmonize our voice and broadband data breach notification rules, and on whether we should adopt harmonizing rules for cable and satellite providers. Finally, we seek comment on appropriate breach notification requirements in response to a breach of data received by a third party.

1. Customer Notification

218. We propose to require BIAS providers and other telecommunications carriers to notify customers of breaches of customer PI no later than 10 days after discovery of the breach, absent a request by federal law enforcement to delay customer notification. Recognizing the harms inherent in over-notification, we propose to adopt a trigger to limit breach notification in certain circumstances. We seek comment on this proposal.

219. We seek comment on under what circumstances BIAS providers should be required to notify customers of a breach of customer PI. For consistency and to minimize burdens on breached entities, we look to other federal statutes and other jurisdictions as a basis for determining when it is appropriate to notify, or not notify, consumers of a breach of customer PI. Various state regulations employ a variety of triggers to address this challenge. We seek comment on whether some of these state requirements would also effectively serve our purpose. For example, some states do not require disclosure if, after an appropriate investigation, the covered entity determines that there is not a reasonable likelihood that harm to the consumers will result from the breach. Should we require breach reporting based on the likelihood of misuse of the data that has been breached or of harm to the consumer? If so, how would broadband providers, and the Commission, determine the likelihood of misuse or harm? If we adopted such a standard, is it necessary to clarify what is meant by "misuse" or "harm"? Is it necessary to also require the provider to consult with federal law enforcement when determining whether there is a reasonable likelihood of harm or misuse?

220. Alternatively, should the requirement to notify customers of a breach be calibrated to a particular type of misuse or harm? Should it be calibrated to the sensitivity of the information? If we allow time for an appropriate investigation, how much time should providers have before they need to make their determination or disclose the breach to customers? If the provider determines that harm to the customer is likely to occur, how quickly thereafter would the provider need to notify the customer of the breach? Are there other triggers we should consider, such as the number of affected consumers? Should different triggers apply to different types of customer PI? Are there other factors that we should consider before requiring breach notifications? What are the potential enforcement and compliance implications associated with this approach?

221. Our existing Section 222 rule does not specify how quickly affected customers must be notified of a data breach involving CPNI. Instead it requires that seven full business days pass after notification to the FBI and the Secret Service before the carrier may notify customers or disclose the breach to the public. Notifying affected customers no later than 10 days following discovery of the breach will allow customers to take any measures they need to address the breach in as timely a manner as possible. We seek comment on this proposal and on potential alternatives.

222. Consistent with our current Section 222 rules, our proposed rules allow federal law enforcement to direct a provider to delay customer notification if notification would interfere with a criminal or national security investigation. We seek comment on this proposal. Should we delay customer notification in every—or in any—instances because of the potential for such notification to interfere with an investigation? The Commission adopted the staggered notification system at the request of federal law enforcement. But, is that still an approach recommended by law enforcement and other stakeholders? Our current Section 222 rules allow carriers to notify affected customers sooner than otherwise required in order to avoid immediate and irreparable harm, but only after consultation with the relevant investigating agency. Should we include such an exception in any new rules?

223. Instead of requiring customer notification of a data breach within a specific period of time, should we adopt a more flexible standard for the timing of customer notification? For example, many state data breach statutes impose an "expeditiously as practicable" or "without unreasonable delay" standard instead of a set timeframe for reporting. What are the benefits and drawbacks to such an approach? If we were to adopt such a standard, should we provide guidance on what would be considered a "reasonable" delay? Under such an approach, how could the Commission ensure that both federal law enforcement agencies and customers are notified in a timely manner? Could the Commission effectively enforce these requirements with such an approach? Should the Commission consider establishing any exceptions to this requirement? Or, should breaches of voice customer PI be distinguished from breaches of broadband customer PI for the reporting requirement? What would the impact of this requirement be on small providers?

224. Although we propose to require notice to customers only after discovery of a breach, we seek comment on whether we should require notice when the telecommunications carrier discovers conduct that would reasonably lead to exposure of customer PI. Should any such requirement be adopted in addition to or in place of a requirement to provide notice upon discovery of a breach?

225. *Content of customer data breach notification.* We propose to require that the customer data breach notice include basic information about the breach sufficient to convey an understanding of the scope of the breach, any harm that might result, and whether customers should take action in response. Specifically we propose to require that a carrier's notification to affected customers include the following:

- The date, estimated date, or estimated date range of the breach;
- A description of the customer PI that was used, disclosed, or accessed, or reasonably believed to have been used, disclosed, or accessed, by a person without authorization or exceeding authorization as a part of the breach of security;
- Information the customer can use to contact the telecommunications provider to inquire about the breach of security and the customer PI that the carrier maintains about the customer;
- Information about how to contact the Federal Communications Commission and any state regulatory agencies relevant to the customer and the service; and

- Information about national credit-reporting agencies and the steps customers can take to guard against identity theft, including any credit monitoring or reporting the telecommunications provider is offering customers affected by the breach of security.

226. We seek comment on this proposal and potential alternatives. The existing Section 222 breach notification rule does not specify the content of customer notification. In 2007, the Commission declined to do so, leaving the contents to the discretion of carriers to tailor the language and method to the circumstances. Although we continue to believe that breached entities should have discretion to tailor the language and method of notification to the circumstances, we believe that it is appropriate to specify the above as a baseline of fundamental information that should be provided to affected individuals to ensure customers receive an adequate level of protection. Does our proposal include the information that customers will likely need in order to take measures to address a breach and its ramifications? Is there additional information that we should require providers to include in their data breach notifications to customers? Should any of the proposed content requirements be revised, and should any be removed? Should content requirements vary based on the type of information breached, the number of customers affected, the extent of economic harm, if any, or other factors? If so, how should the requirements vary?

227. *Method of customer data breach notification.* In order to inform customers about breaches, we propose that the telecommunications carrier should provide written notification to the customer's address of record, email address, or by contacting the customer by other electronic means using contact information the customer has provided for such purposes. This framework ensures that customers receive prompt notification in the manner in which they expect to be contacted by their telecommunications carriers. In 2007, the Commission chose not to specify the method by which carriers would notify their affected customers of a breach. Our proposal is consistent with the HIPAA breach rule and many state breach notification rules that specify that notification can be by mail, by email, or by other electronic means using contact information the customer has provided. Service providers should be in the best position to know how to reach their customers with important notifications and should have already established how to communicate important notifications to their customers. We seek comment on our proposal, and whether a more specific notification method is necessary or desirable to protect customers.

2. Notification to Federal Law Enforcement and the Commission

228. In order to ensure that law enforcement has timely notice to conduct confidential investigations into data breaches, we propose to require telecommunications providers to notify the Commission no later than seven days after discovering any breach of customer PI, and to notify the FBI and the Secret Service no later than seven days after discovery a breach of customer PI reasonably believed to have affected at least 5,000 customers. With regard to federal law enforcement notification, we further require that such notifications occur at least three days before a provider notifies its affected customers, except as discussed above. We seek comment on our proposal.

229. Our proposal, which aims to balance the importance of data breach notifications with the administrative burdens on telecommunications carriers and law enforcement agencies from excessive reporting, is consistent with many state statutes requiring notice to state law enforcement authorities, proposed federal legislation, and the Executive Branch's legislative proposal, each of which require law enforcement notification of large breaches. We do not want over-reporting to the FBI and the Secret Service to impose an excessive burden on their resources. We seek comment on our proposed threshold of 5,000 affected customers before a provider must report a data breach to the FBI and the Secret Service. Should we have a threshold for such reporting? If so, is 5,000 affected customers the correct threshold? For example, although a slightly different context, we note that some states have a minimum threshold of 10,000 affected customers for reporting to the consumer reporting agencies. We observe that our proposed threshold would reduce the burden on existing voice telecommunications carriers, which are currently required to report *all* breaches to the FBI and Secret Service. Does the proposed reporting threshold meet the needs of law enforcement and provide adequate safeguards? We also seek comment on whether other or different federal law enforcement agencies should receive data breach notification reports from providers. In addition to other federal law enforcement agencies, we also seek comment about whether we should require telecommunications carriers to report breaches to relevant state law enforcement agencies. What are the benefits and drawbacks of this proposal, particularly for small providers?

230. We propose to require providers to give the Commission notice of all data breaches, not just those affecting 5,000 or more customers. As the agency responsible for regulating telecommunications services, we have a responsibility to know about problems arising in the telecommunications industry. Breaches affecting smaller numbers of customers may not cause the same law enforcement concerns as larger breaches because they may be less likely to reflect coordinated attacks on customer PI. They may, however, provide a strong indication to Commission staff about existing data security vulnerabilities that Commission staff can help providers address through informal coordination and guidance. They may also shed light on providers' ongoing compliance with our rules. We invite commenters to explain whether the Commission should be notified of all data breaches. Are there reasons that the Commission should not be notified of all data breaches? How much of an incremental burden is associated with notifying the Commission of all data breaches as opposed to only notifying customers of all data breaches?

231. We also propose that notification to federal law enforcement, when required, should be made no later than seven days after discovery of the breach, and at least three days before notification of a customer. We seek comment on this proposal and on potential alternative approaches. Will the proposed time-frames for reporting to law enforcement agencies be effective? The Commission's existing rule provides that such notification must be made "[a]s soon as practicable, and in no event later than seven (7) business days, after reasonable determination of the breach."

232. Although we propose to require notice to law enforcement only upon discovery of a breach, we seek comment on whether we should require notice when the telecommunications provider discovers conduct that would reasonably lead to exposure of customer PI. Should any such requirement be adopted in addition to or in place of a requirement to provide notice upon discovery of a breach? Is such a requirement overly-broad to achieve our purposes? Would such a duty help protect customers against breaches and against the effects of being unaware that their information has been breached? If we do adopt such a requirement, should we require that the provider reasonably

believe that the potential breach could affect a certain number of customers?

233. *The method and content of data breach notification to federal law enforcement.* We propose to extend our existing Section 222 requirements for both the method and substance of the data breach notification to federal law enforcement agencies to include notice to the Commission, and to impose the same obligations on BIAS providers. Our current breach notification rule requires that voice providers notify the FBI and Secret Service "through a central reporting facility" to which the Commission maintains a link on its Web site. We believe that the information currently submitted through the FBI/Secret Service reporting facility is sufficient, and that the same information should be reported under the rule we propose here. We seek comment on our proposal. Are there any additional or alternative categories of information or methods of communication that should be included in these disclosures? To protect individuals' privacy, we do not propose requiring that any personal information about individuals be included in breach reports submitted to the Commission or to other governmental entities. Are there any reasons such personal information should be included, and how could we ensure that any such requirement would be consistent with our goal of protecting the privacy of individuals? Alternatively, should we affirmatively prohibit customer PI from being included in reports submitted to the Commission or other governmental entities?

3. Record Retention

234. We propose to extend our existing Section 222 record retention requirements regarding data breaches to BIAS providers. Currently, voice providers are required to maintain a record of any discovered breaches and notifications to the FBI, the Secret Service, and customers regarding those breaches for a period of at least two years. This record must include, if available, the date that the carrier discovered the breach, the date that the carrier notified the Secret Service and the FBI, a detailed description of the CPNI that was breached, and the circumstances of the breach. As with the rest of our proposal, we propose to extend this requirement to include a detailed description of the customer PI that was breached. We seek comment on this proposal.

235. We seek comment on how telecommunications carriers subject to our existing Section 222 rules have found the current Section 222 requirement to work in practice. What have been the costs for compliance with this provision? Is any of the information that we propose to be retained unnecessary? Are there additional categories of information that should be retained? We also seek comment whether this requirement has proved useful to law enforcement needs. We seek comment on other potential alternatives. What are the benefits and drawbacks of any alternative approaches?

4. Harmonization

236. We seek comment on our proposal to apply new data breach notification requirements to both voice and BIAS providers. Both BIAS providers and providers of voice telephony receive sensitive information from customers, including about usage of the service provided. When this information is compromised, customers may suffer substantial financial, privacy-related, and other harms. Accordingly, we ask commenters to explain whether our proposed rules should apply equally to all providers of telecommunications services. We are interested in understanding any efficiencies gained or potential problems caused by harmonizing the data breach notification rules across technologies. Are there any reasons that BIAS providers and other telecommunications carriers should have different notification requirements for breaches of customer PI? If so, what requirements should we adopt in the BIAS and voice contexts? We also seek comment on whether we should adopt harmonizing rules for cable and satellite providers.

5. Third-Party Data Breach Notification

237. As a final matter, we seek comment on how our rules should treat data breaches by third parties with which a BIAS provider has shared customer PI. Should we require BIAS providers to contractually require third parties with which they share customer PI to follow the same breach notification rules we adopt for BIAS? Are such contractual safeguards necessary to ensure that third-party breaches are discovered and the relevant parties notified on a timely basis? Should we permit BIAS providers and third parties to determine by contract which party will provide the notifications required under our rules when there is a third-party breach? Where third parties are contractually obligated to provide these notifications, should BIAS providers be required to provide notifications of their own? Could such dual notifications confuse or overwhelm consumers, or would they rather help consumers better understand the circumstances of a breach and hold their providers accountable for their data management practices? Which approach best serves the needs of law enforcement? Are there alternative approaches to third-party data breach notification that we should consider?

G. Practices Implicating Privacy That May Be Prohibited Under the Act

238. We seek comment on whether there are certain BIAS provider practices implicating privacy that our rules should prohibit, or to which we should apply heightened notice and choice requirements. In particular, we propose to prohibit the offering of broadband services contingent on the waiver of privacy rights by consumers, and seek comment on whether practices involving (1) the offering of higher-priced broadband services for heightened privacy protections, (2) the use of deep packet inspection (DPI) for purposes other than network management, and (3) persistent identifiers should be prohibited or subject to heightened privacy protections. On what statutory basis could we rely to prohibit such practices? We seek comment on whether such practices are consistent with preserving customer choice, protecting the confidentiality of customer proprietary information, and the public interest. We also seek comment on the restrictions imposed on carriers' use of proprietary information in Section 222(b).

239. We encourage commenters who suggest heightened notice and choice requirements for certain practices to describe the consent regime that they propose, explain why it is appropriate for the practice at issue, and identify the statutory authority that supports such requirements. For instance, would requiring carriers to "refresh" opt-in or opt-out consent periodically for certain practices be appropriate? Should more prominent notice or specific prescribed text be required in certain instances? Should we work with interested stakeholders to develop privacy best practices guidelines and create a "privacy protection seal" that BIAS providers could display on their Web sites to indicate compliance with those guidelines? For any alternatives commenters propose, we ask that they also comment on the benefits and burdens of their proposals, particularly for small providers. Are there certain types of practices for which a notice-and-choice regime is insufficient to protect consumer privacy? Why or why not? What are viable alternatives to

notice and choice and what are their associated benefits and burdens, particularly for small providers? Are there ways that the Commission can encourage BIAS providers to engage in privacy-by-design practices to build privacy protections into new or existing systems and products?

240. *Service Offers Conditioned on the Waiver of Privacy Rights.* We propose to prohibit BIAS providers from making service offers contingent on a customer surrendering his or her privacy rights. The FTC has raised concerns about these kinds of arrangements by broadband providers, noting that "[w]hen consumers have few options for broadband service, the take-it-or-leave-it approach [to privacy] becomes one-sided in favor of the service provider." In such situations, the FTC found, for example, that "the service provider should not condition the provision of broadband on the customer's agreeing to . . . allow the service provider to track all of the customer's online activity for marketing purposes." We seek comment on our proposal to prohibit these types of arrangements, and on alternative approaches we might take to protect broadband consumers from potentially coercive service offerings. Notwithstanding their risks, are there countervailing consumer benefits associated with these types of offers to provide BIAS?

241. *Financial Inducement Practices.* We also seek comment on whether business practices that offer customers financial inducements, such as lower monthly rates, for their consent to use and share their confidential information, are permitted under the Communications Act. Certain broadband providers, including AT&T, have begun to experiment with these types of business models. For example, AT&T's Gigapower fiber-to-the-premises (FTTP) service currently offers consumers a "Premiere" pricing option, which, in exchange for a rate that is roughly $30 off of the standard $100 monthly subscription fee, allows AT&T to use "individual Web browsing information," including search and browsing history "to tailor ads and offers to [customers'] interests." AT&T has reportedly indicated that since its debut, a substantial majority of its Gigapower customers have elected to participate in the discounted Internet Preferences program.

242. We recognize that it is not unusual for consumers to receive perks in exchange for use of their personal information. In the brick-and-mortar world, loyalty programs that track consumers purchasing habits and provide rewards in exchange for that information are common. In the broadband ecosystem, "free" services in exchange for information are common. However, it is not clear that consumers generally understand that they are exchanging their information as part of those bargains.

243. Notwithstanding the prevalence of such practices in other contexts, the FTC and others have argued that these business models unfairly disadvantage low income or other vulnerable populations who are unable to pay for more expensive, less-privacy invasive service options. Others have warned that these types of financial inducements could become "coercive tools to force consumers to give up their statutory rights." We seek comment on these concerns. What is the current impact on low-income consumers and others of business practices that offer financial inducements in return for customers' consent to their broadband providers using and sharing confidential information? What is likely to be the impact if such practices become more wide-spread among broadband providers?

244. Given these concerns, Should we adopt rules concerning the use of such practices by BIAS providers? Should the offering of such practices be subject to the opt-out or opt-in frameworks we propose above? Our proposed rules require BIAS providers to allow customers to deny or withdraw approvals at any time and require that a denial or withdrawal will not affect the provision of any services to which the customer subscribes. Are these principles consistent with allowing financial inducements? If we were to allow financial inducements, how should a rule allowing withdrawal of approval work? Should such practices be subject to heightened notice and choice requirements, and, if so, what requirements? Section 222(c)(1) prohibits providers from using or disclosing individually identifiable CPNI for purposes other than providing the telecommunications service, absent customer approval. We seek comment whether a customer's approval to use or disclose his or her proprietary information in exchange for financial incentives is meaningful if customers' broadband choices are limited by lack of competition, switching costs, or financial hardship. Does simply offering such practices violate providers' baseline duty under Section 222(a) to protect the confidentiality of customers' proprietary information? Should BIAS providers be prohibited from engaging in such practices?

245. Despite the risks discussed above, some have argued that consumers stand to benefit from the sale of personal information collected by entities such as ISPs and other telecommunications companies. In light of these potential consumer benefits, should we accept that, upon being fully informed about the privacy rights they are exchanging for a discounted broadband price, consumers can and should be allowed to enter into such bargains? Are there any baseline privacy protections with which providers should be required to comply? If instances arise where it appears that the providers is offering subscribers financial inducements to waive their privacy rights the value of which far exceed the value to the provider of the customer's data, how should we evaluate such offers?

246. *Deep Packet Inspection.* We seek comment whether the use of DPI for purposes other than providing broadband services, and reasonable management thereof, should be prohibited or otherwise subject to a heightened approval framework. DPI involves analyzing Internet traffic beyond the basic header information necessary to route a data packet over the Internet. DPI is used by network operators to gather information about the contents of a particular data packet, and may be used for reasonable network management, such as some tailored network security practices. In addition, DPI has been used by network providers in order to serve targeted advertisements. DPI has also been used by network providers to identify and block specific packets.

247. The FTC has found that the use of DPI by Internet service providers for marketing purposes raises unique privacy concerns. Noting that broadband providers are uniquely situated as a "gateway" to the Internet, the FTC has found that "ISPs are thus in a position to develop highly detailed and comprehensive profiles of their customers—and to do so in a manner that may be completely invisible." The 2012 FTC Privacy Report also noted that switching costs and a lack of competitive options for broadband service may inhibit consumers' ability to avoid these practices, should they wish to do so. As a result, the FTC voiced "strong concerns about the use of DPI for purposes inconsistent with an ISP's interaction with a consumer," and called for express consumer consent requirements, or more robust protections, as a precondition for their use.

248. We seek comment whether BIAS providers' use of DPI for purposes other

than providing broadband services, or as required by law, should be prohibited. Should such practices be subject to either the opt-out or opt-in requirements we have proposed above, or heightened approval requirements? For what purposes do broadband providers engage in DPI? What would be the benefits and drawbacks of prohibiting the use of DPI for purposes other than providing BIAS? What would be the costs to consumers and BIAS providers of such a prohibition?

249. Under what authority could the Commission regulate or prohibit DPI practices? For example, do such practices violate a provider's duty to protect the confidentiality of customer information under Section 222(a)? Do such practices violate a provider's duties under Section 705? We also seek comment about the extent to which adoption of encryption technology would mitigate privacy concerns regarding broadband provider use of DPI. What types of information that may be learned by BIAS providers' use of DPI are encrypted, and what types are not encrypted? To what extent does an end user have control over the use of encryption? How, if at all, should the extent of BIAS competition and switching costs for BIAS be taken into account in addressing the impact of DPI on consumer privacy protection?

250. *Persistent Tracking Technologies.* We seek comment whether the use of persistent tracking technologies should be prohibited, or subject to opt-out or opt-in consent. Under our proposed rules, certain types of information used in persistent tracking technologies, such as unique identifiers, would be considered both CPNI and PII. The use of persistent tracking technologies may allow network operators to obtain detailed insight into their customers' Internet usage. For example, UIDH, injected by carriers into the HTTP header of a data packet, allow BIAS providers to repackage and use customer data for targeted advertising purposes. Unlike cookies, which are located in a web browser and may be controlled locally, UIDH are injected by carriers at the network level, thereby preventing customers from removing them directly. The Enforcement Bureau recently entered into a consent decree with a carrier that used UIDH without obtaining informed consent from its customers. As part of the Consent Decree, the carrier paid a fine and agreed to obtain opt-in approval from its customers before sending UIDH to third-party Web sites.

251. We seek comment on what other technologies can be used by BIAS providers to track broadband users and their devices, either by storing information (*e.g.,* cookies), collecting partially unique information (*e.g.,* fingerprinting) or associating information at the network level (*e.g.,* UIDH). Do these technologies pose a privacy risk to BIAS customers and, if so, what are the best ways to protect customers' private information and enhance customer control?

252. We seek comment on whether the use of persistent tracking technologies may expose BIAS customers to unique privacy harms, and as such, whether the Commission should prohibit BIAS providers from employing such practices to collect and use customer PI and CPNI. Alternatively, should the use of persistent tracking technologies be subject to opt-in or opt-out consent? Do customers understand how BIAS providers are using this technology such that notice and the opportunity to approve such uses is "informed"? How do BIAS providers use the information gleaned from such technologies? What are the benefits to customers of such technology, if any? What would be the benefits and drawbacks to prohibiting such practices, or subjecting their use to opt-in or opt-out approval? Under what authority could the Commission prohibit BIAS providers' deployment of such technologies? Does the use of such technology violate BIAS providers' duty to protect the confidentiality of customer information, with or without customer approval? Does it violate any other provisions of the Communications Act?

253. *Section 222(b).* We also seek comment on how best to interpret and apply in the BIAS context the limitations imposed by Section 222(b) on carriers receiving proprietary information from other carriers for the purposes of providing telecommunications services. Under Section 222(b), a "telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts." The Commission has previously interpreted this section as applying specifically to carriers' propriety information. Should we understand this section as protecting information about all of the traffic that a BIAS provider receives from another provider from being used by the receiving BIAS provider for any purpose other than the provision of the telecommunications service? Should we understand this provision to be referring only to information that is proprietary to a telecommunications carrier, or to all three types of proprietary information referred to in Section 222(a)—"proprietary information of or relating to telecommunications carriers, equipment manufacturers and customer proprietary information?" What are the privacy implications of the different readings of this provision?

254. *Other.* Lastly, we seek comment whether there are other uses or disclosures of customer PI, other than those we have here described, that should be prohibited or subject to heightened notice and choice requirements. If so, what are they, and why should they be prohibited or subject to more stringent notice and choice requirements? On what authority could we act to prohibit such practices?

H. Dispute Resolution

255. We seek comment on whether our current informal complaint resolution process for alleged violations of the Communications Act is sufficient to address customer concerns or complaints with respect to the collection, use, and disclosure of customer information covered by our proposed rules. At present, customers who experience privacy violations may file informal complaints through the Consumer Inquiries and Complaints Division of the Consumer & Governmental Affairs Bureau. Are these mechanisms adequate? If not, we seek comment on whether BIAS providers currently do or should provide other optional, impartial, and efficient dispute resolution mechanisms. Such programs, if structured fairly and operated efficiently, could help customers resolve privacy complaints more quickly and with less cost than formal complaints to the Commission or private litigation. However, if procedures are not carefully structured, BIAS providers could use dispute resolution programs to disadvantage customers and deny them the full panoply of due process rights they would receive through formal legal processes.

256. BIAS providers are of course free to offer arbitration as a method of dispute resolution. Arbitration can be a useful tool in the dispute resolution toolkit, but it may not suitable for all situations. We seek comment on whether to prohibit BIAS providers from compelling arbitration in their contracts with customers. In the *2015 Open Internet Order,* we agreed with the observation that "mandatory arbitration, in particular, may more frequently benefit the party with more resources and more understanding of the dispute procedure, and therefore should not be

adopted." We further discussed how arbitration can create an asymmetrical relationship between large corporations that are repeat players in the arbitration system and individual customers who have fewer resources and less experience. Just as customers should not be forced to agree to binding arbitration and surrender their right to their day in court in order to obtain broadband Internet access service, they should not have to do so in order to protect their private information conveyed through that service.

257. We additionally seek comment on any other dispute resolution proposals we should consider in conjunction with this rulemaking, including whether and how to harmonize such proposals with our existing voice CPNI framework. To the extent we should adopt any dispute resolution requirements, we seek comment on how to ensure access to dispute resolution for customers with disabilities. For all dispute resolution proposals, we seek comment on the benefits and burdens of such proposals—in particular the burdens such proposals would place on small providers—and any reasonable alternatives that could alleviate associated burdens.

I. Preemption of State Law

258. Consistent with the Commission's approach to the current Section 222 rules, we propose to preempt state laws only to the extent that they are inconsistent with any rules adopted by the Commission. The states are very active participants in ensuring their citizens have robust privacy and data security protections, and we do not intend to curtail their work. However, the Commission is tasked with implementing the requirements of Section 222, and as the Commission has previously found, we "may preempt state regulation of intrastate telecommunications matters 'where such regulation would negate the Commission's exercise of its lawful authority because regulation of the interstate aspects of the matter cannot be severed from regulation of the intrastate aspects.' "

259. We observe that the Commission has interpreted this limited exercise of its preemption authority to allow states to craft laws regarding the collection, use, disclosure, and security of customer data that are more restrictive than those adopted by the Commission, provided that regulated entities are able to comply with both federal and state laws. Our proposal is consistent with the approach adopted by the Commission in prior CPNI Orders, and is in line with the Commission's goal of allowing states to craft their own laws related to the use of personal information, including CPNI. Therefore, as the Commission has done in previous CPNI orders, we propose to preempt inconsistent state laws on a case-by-case basis, without the presumption that more restrictive state requirements are inconsistent with our rules. We seek comment on this proposal, and on any alternative approaches we may take to state laws governing customer PI collected by BIAS providers and addressed by our proposed rules. Specifically, we seek comment on whether broader application of our preemption authority is warranted, or, alternatively, whether we should decline to preempt state law in this area altogether. We seek comment on the benefits and risks presented by these competing approaches to preemption.

J. Other Proposed Frameworks and Recommendations

260. Various stakeholders have publicly proposed BIAS privacy frameworks and recommendations for us to consider. These include frameworks offered by a coalition of industry associations that includes a number of BIAS providers (Industry Framework), New America's Open Technology Institute (OTI Framework), Public Knowledge (PK Framework), the Electronic Privacy Information Center (EPIC Framework), the Information Technology and Innovation Foundation (ITIF), and Digital Content Next (Digital Content Framework). Like the proposals in this Notice, all of the stakeholder proposals include components that would impose transparency, choice, and security obligations on confidential consumer information collected by BIAS providers, and we have incorporated some of their recommendations in to our own. However, we recognize that our consideration of how best to ensure BIAS providers protect the confidentiality of their customers' information could also benefit from feedback on these alternative proposals as a whole. We therefore describe each proposed framework briefly in turn, and seek comment on their proposals, as additions to or substitutes for our own.

261. In addition to seeking comment on each of these sets of proposals, we seek comment on how these separate proposals correspond with our proposed framework. Are there aspects of them that should be incorporated into our proposal? We note that there is broad agreement about the importance of transparency, choice, and data security, but in other ways some of the proposals appear to be inconsistent with each other. How should those inconsistencies be resolved? Does our definition of key terms, including CPNI, customer PI, and personally identifiable information, account for the scope of protections and obligations contemplated under these proposals, given possible discrepancies in how those terms are defined between different frameworks?

262. *Industry Framework.* The Industry Framework proposes four principles that we should consider when adopting privacy rules: (1) Transparency; (2) respect for context/consumer choice; (3) data security; and (4) data breach notification. The proponents of the Industry Framework also recommend that any privacy rules we adopt should be limited to prohibiting unfair and deceptive practices, as outlined in the FTC's Policy Statements. They also argue that any such privacy rules should (and lawfully can) only apply to telecommunications service providers in the provision of telecommunications service, and only to CPNI that is made available by virtue of the customer-carrier relationship. They also contend that any such rules should not apply to any information that has been de-identified, aggregated, or does not otherwise identify a known individual.

263. The proponents of the Industry Framework also recommend a general approach of setting privacy or security goals, rather than methods by which those goals are to be achieved, and suggests that we should, beyond issuing rules, provide additional guidance on interpreting the privacy framework through workshops or reports, and encourage and support industry guidelines. They also recommend harmonizing the existing CPNI guidelines with any BIAS guidelines we adopt and that we should adopt more flexible standards than are currently part of the Section 222 rules.

264. The Industry Framework also details more specific principles to which it believes BIAS providers should adhere. First, the Industry Framework specifies that BIAS providers should give notice that is neither deceptive nor unfair that describes the collection, use, and sharing of CPNI with third parties. Second, the Industry Framework recommends requiring BIAS providers to provide consumer choice where the failure to do so would be deceptive or unfair. However, the Industry Framework specifies that consumers need not be given a choice when their information will be used for product or service fulfillment, fraud prevention, compliance with law, responses to government requests, network

management, first-party marketing, and affiliate sharing where the affiliate relationship is reasonably clear to consumers. Third, the Industry Framework recommends that BIAS providers maintain a CPNI data security program that has reasonable protections to prevent unauthorized access, use, or disclosure, concomitant with the nature and scope of the company's activities, the sensitivity of the data, and the size and complexity of the company's data operation. Fourth, the Industry Framework recommends requiring BIAS providers to notify customers of data breaches when a breach is likely to cause substantial harm to customers and failure to notify would be unfair or deceptive, with providers having the flexibility to determine how and when to provide notice. We seek comment on these proposals.

265. *OTI Framework.* The OTI Framework begins by recommending that we adopt a broad definition of CPNI in the broadband context, which would include subscriber location information; sites visited; specification of connected devices; and time, amount, and type of Internet traffic. The OTI Framework also proposes that the definition of CPNI should be expanded "where appropriate" to account for "new risks in broadband context," and that we should define (and presumably protect) "proprietary information" as defined in the *TerraCom NAL.* With that proposed definition in place, the OTI Framework makes several specific policy recommendations on (1) notice and consent, (2) disclosure of CPNI to customers, (3) data security and breach notification, (4) complaint process, and (5) differential privacy protections based on price. In the matters of notice and consent, the OTI Framework recommends that we require BIAS providers to give accurate and reasonably specific notice of uses of information and of any third parties to whom the information will be disclosed. The OTI Framework proposes opt-in consent for all non-service-related uses of CPNI. The OTI Framework also appears to suggest that we provide rules or other guidance on how BIAS providers might disclose CPNI to customers, as required under Section 222(c)(2). The OTI Framework also recommends required data breach notification similar to the existing CPNI rules. The OTI Framework proposes a formal complaint process for violations of the privacy rules similar to the processes for wireline and wireless telephony. Finally, the OTI Framework proposes prohibiting BIAS providers from charging subscribers for the baseline privacy protections specified in the OTI Framework. We seek comment on these proposals.

266. *PK Framework.* In its proposed privacy framework, Public Knowledge recommends that we restate and adopt the framework of the *2007 CPNI Order,* which it argues would include finding all PII within the scope of CPNI, not implementing a safe harbor rule, and requiring carriers to improve data security protections of their own accord as new precautions become available, without requiring additional rulemaking. Public Knowledge proposes that BIAS providers, and not customers, bear the burden of ensuring privacy protections, while allowing customers to engage in privacy-enhancing practices themselves. In particular, this means that the availability of customer-initiated protections like encryption and VPNs does not absolve BIAS providers from protecting the information of customers who do not purchase or deploy those solutions. Public Knowledge also recommends that we prohibit BIAS providers from interfering with customers' privacy enhancing tools and techniques, such as blocking tracking software or clearing it from caches.

267. The PK Framework also includes recommendations on two particular practices: Deep packet inspection and differential privacy protections based on discounts or other inducements. With regard to deep packet inspection, the PK Framework suggests that consent to use or disclose CPNI does not mean consent to use or disclose communications content. Public Knowledge further recommends that we prohibit "*any* provider under *any* circumstances from using DPI or other tools to view the content of subscriber traffic." With regard to differing privacy protections, the PK Framework recommends prohibiting BIAS providers from "coercing consent" from customers by charging fees or withholding functionality of services that a subscriber "reasonably believes are included as part of the purchase of [BIAS]." However, the PK Framework does not recommend a categorical prohibition on inducements to consent, though it cautions that some "discounts" and "services" may be disguised coercive tools, and that discounts could have a disparate impact against the privacy of lower-income customers.

268. Finally, the PK Framework recommends that we seek comment on supplementing the privacy and competition protections of Section 222 with rules based on our authority over cable and wireless providers. With regard to privacy, the PK Framework recommends enhancing cable privacy rules under Section 631 and wireless privacy under Section 303(b) to ensure that protections based in Section 222 can be equally applied in those contexts. With regard to competition, the PK Framework recommends supplementing competition-enhancing rules derived from Section 222 with authority from Section 628 and Section 303(b), to prevent anticompetitive uses of customer information in wireless and video services, including over-the-top video services. We seek comment on these proposals.

269. *EPIC Framework.* EPIC makes five recommendations for privacy rules. First, it argues that the rules should apply the FIPPs, as outlined in the HEW Report and the Consumer Privacy Bill of Rights. Second, it recommends data minimization requirements, including rules limiting the collection of data, requiring the disposal or de-identification of data that is no longer needed, and requiring reasonable data retention and disposal policies. EPIC opposes mandatory data retention and recommends data be retained for the shortest period possible. Third, the EPIC Framework recommends we promote privacy enhancing technologies such as "Do Not Track" mechanisms. Fourth, the EPIC Framework argues that all Internet-based service providers obtain opt-in consent for the use or disclosure of consumer data.

270. EPIC also recommends that the rules incorporate its Code of Fair Information Practices for the National Information Infrastructure, which itself incorporates several principles and recommendations, including: Protecting the confidentiality of electronic communications; limiting data collection; requiring explicit consent for service provider disclosure; requiring providers to disclose data collection practices; prohibiting payment for routine privacy protection, and allowing charges only for "extraordinary" privacy protection; appropriate security policies; and an enforcement mechanism. We seek comment on these proposals.

271. *ITIF Recommendations.* In a paper on broadband privacy, ITIF makes a number of recommendations, beginning with a recommendation that we forbear from the application of Section 222 to BIAS. Alternatively, ITIF recommends that we declare the privacy policies of BIAS providers as non-common carrier services, thus allowing the FTC to exercise jurisdiction over their privacy practices. ITIF's third proposal is that we limit rules to those which correspond as much as possible

to the FTC's past privacy enforcement in this area. ITIF suggests that any fines enforcing such rules be tied to actual consumer harm and amplified when the harm was intentional. The ITIF Recommendations also suggest that we should support and encourage the continued formation of industry best practices; the development of experiments with pricing around new uses of consumer data; and the use, disclosure, and sharing of aggregate and de-identified customer data. We seek comment on these proposals.

272. *Digital Content Framework.* Digital Content Next stresses the importance of respecting consumers' expectations within the context of the interaction, as well as providing consumers with transparency and choice. The Digital Content Framework further recommends that, in the context of BIAS providers, the contrast between the amount of information collected and the customers' expectations of how that information is to be used suggests that service providers should be held to a higher standard than other participants in the online ecosystem.

273. Digital Content Next recommends we require broadband providers to provide consumers with transparency and meaningful choice, particularly when information is used outside of consumer expectations and outside of the context in which the information was initially given. Digital Content Next more specifically suggests that we follow the pattern of our existing Section 222 rules, allowing opt-out approval for marketing services similar to the providers' and requiring opt-in approval for broader marketing or advertising. The Digital Content Framework further recommends that the choice mechanisms should be clear, easy to use, and persistent, suggesting that they could take the form of account settings set up by the provider, or the recognition of signals sent by a device or a browser. Digital Content Next also recommends we work with self-regulatory bodies, the FTC, and BIAS providers on developing business practices and technologies, including how to account for customers' privacy choice mechanisms across multiple devices and in cross-device tracking. We seek comment on these proposals.

274. *Other.* Finally, we seek comment on any alternative approaches we can take to protect customer privacy, preserve customer control, and promote innovation, as well as the benefits and burdens associated with any such alternatives.

K. Multi-Stakeholder Processes

275. We seek comment on whether there are specific ways we should incorporate multi-stakeholder processes into our proposed approach to protecting the privacy of customer PI. The Department of Commerce's 2010 Green Paper recommended use of multi-stakeholder processes to clarify how the FIPPs should be applied in particular commercial contexts. Since then, the Department of Commerce through NTIA has convened multi-stakeholder processes on several topics, including mobile application transparency, facial recognition technology, and unmanned aircraft systems. The Administration's Privacy Bill of Rights also incorporates multi-stakeholder processes into its framework. We seek comment on what lessons have been learned from the multi-stakeholder processes that NTIA has convened on behalf of the Department of Commerce. Would such processes be useful in developing guidelines and best practices relating to these proposed rules? Above we have sought comment on whether aspects of our proposed rules, such as notice language or security standards would benefit from a multi-stakeholder process such as that conducted by NTIA. Would a similar process be useful to address the privacy practices of broadband providers more generally, or in other specific areas? If so, how should the process be managed and governed? Should such processes serve as a supplement or an alternative to further rulemaking?

III. Legal Authority

276. In this section, we discuss and seek comment on our statutory authority to adopt the rules we propose in this Notice and for any other rules that we may conclude, as a result of this proceeding, to be in the public interest. Since the enactment of the Communications Act of 1934, there has been an expectation that providers of communications services have obligations to protect both the security and the privacy of information about their customers. We intend our proposed rules to be primarily grounded in Section 222. However, we believe that we can also find support in other sections of the Communications Act, including Sections 201 and 202 of the Communications Act, which prohibit telecommunications carriers from engaging in unjust, unreasonable, or unreasonably discriminatory practices; Section 706 of the Telecommunications Act of 1996, as amended (1996 Act), which requires the Commission to use regulating methods that remove barriers to infrastructure investment; and Section 705 of the Communications Act, which restricts the unauthorized publication or use of communications. Taken together, these statutory provisions give us the authority and responsibility to ensure that telecommunications carriers and other service providers protect the confidentiality of private customer information and give their customers control over the carriers' use and sharing of such information.

277. The Act gives us the authority to prescribe rules that may be necessary in the public interest to carry out the Communications Act, and our authority to adopt rules to interpret and implement Section 222's provisions is well established. We welcome comment on the legal framework we offer below for this proceeding and invite commenters to offer their own legal analysis on whether the rules we propose, the alternatives on which we seek comment, and the recommendations that commenters make are consistent with and supported by the statutory authority upon which we rely, or on other statutory authority, including, for example, Sections 631 and 338(i) of the Communications Act. To the extent that commenters offer alternate proposals, we welcome explanations of the extent to which such proposals are consistent with and authorized by Section 222 or other relevant statutory provisions. We focus our discussion in this legal authority section on some of the most significant issues in this proceeding, but we also invite commenters to offer analysis of the Commission's legal authority on all of the rules we propose today.

A. Section 222 of the Communications Act

278. In the sections above, we seek comment on adopting rules that require telecommunications carriers, including providers of BIAS, to protect, and to provide their customers with notice, choice, and data security with respect to their customer PI. As described in more detail below, we believe that these proposals are fully supported by Section 222, and invite comment on that issue.

279. Congress added Section 222 to the Communications Act in 1996. Section 222, entitled "Privacy of customer information," established a new statutory framework governing carrier use and disclosure of customer proprietary network information and other customer information obtained by carriers in their provision of telecommunications services. Fundamentally, Section 222 obligates telecommunications carriers to protect

the confidentiality of proprietary information, including proprietary information about their customers, and in furtherance of that obligation it requires carriers to seek approval before using or sharing customer proprietary network information. When we reclassified BIAS as a telecommunications service, we determined that forbearance from Section 222 would not serve the public interest because of the importance of ensuring that BIAS customers have strong privacy protections.

280. We recognize that earlier Commission decisions focused primarily on Section 222(c)'s protection of CPNI, and could be read to imply that CPNI is the only type of customer information protected. However, those decisions simply did not need to address the broader protections offered by Section 222(a), and we do not so limit ourselves here. The focus of the earliest decisions implementing Section 222 was generally on the restrictions on use and sharing of individually identifiable CPNI in particular, especially from the perspective of introducing competition into the telecommunications market and replacing the CPNI rules that the Commission had adopted before the 1996 Act, which were focused on protecting independent enhanced service providers and equipment suppliers from discrimination by incumbent local exchange carriers. The duty to secure the confidentiality of customer information beyond CPNI would not have been as substantial a concern in the years before it became so common for information to be stored electronically. In 2007, the Commission strengthened its rules governing secure handling of CPNI in order to address problems that had been identified regarding the advertising and sale of personal telephone records, which are indisputably CPNI, and in doing so acknowledged the general mandate to protect confidentiality in 222(a).

281. Today, when telecommunications services are provided by myriad carriers, and when customers' sensitive information is typically held in digital form that could pose security risks if not managed properly, we believe that Section 222(a) should be understood to mean what it says and that it should not be so narrowly construed. More recently, the Commission made clear its view that the set of customer information protected by Section 222(a) is broader than CPNI in the 2014 *TerraCom NAL*, and reiterated that view in the *2015 Lifeline Reform Order*.

282. In this Notice, we now propose rules that we believe are necessary to implement carriers' obligation to protect customer information that is not CPNI, and we seek comment here specifically on our proposal that subsection (a) of Section 222 provides authority for the Commission to adopt such rules. Furthermore, we understand that the phrase "protect the confidentiality" means more than preventing unauthorized access; confidentiality includes the concept of trust, and consumers rightfully expect that information that their BIAS providers acquire by virtue of providing BIAS should be used and shared only for expected purposes. Indeed, we believe that each of the core privacy principles we seek to uphold in this proceeding—transparency, choice, and security—is built into the authority granted by Section 222.

283. *Transparency.* We have often exercised our authority under Section 222 to describe the types of notice that would be necessary to constitute "approval" under Sections 222(c)(1), (c)(2), and (d)(3). Without adequate disclosure, consumers cannot truly be held to have approved any given use or sharing of their information. Furthermore, we believe that adequate disclosure of privacy and security practices is necessary to protect the confidentiality of proprietary information of and relating to customers. Disclosure helps to ensure that consumers, and not only service providers, can assign the appropriate weight to the privacy of their information compared to the value of allowing the service provider to use or share the information. We also tentatively conclude that adequate transparency is necessary to ensure that BIAS providers' practices are just, reasonable, and not unreasonably discriminatory, and that disclosures are in fact a necessary part of providing just and reasonable service. Finally, we believe that transparency obligations do not constitute unconstitutionally compelled speech under the First Amendment, and we seek comment on that issue.

284. *Choice.* Customer approval is a key component of the privacy framework of Section 222, and a core part of our existing CPNI rules. Our proposed rules for BIAS providers draw from this framework, requiring customer approval for many uses, but permitting that approval to be granted in an opt-out framework for many uses where an opt-in approval requirement may be overly burdensome. This framework, in the context of our existing rules, was successfully adopted after the Tenth Circuit found an earlier set of rules with fewer opt-out options to be insufficiently supported by the record at the time. The rules we propose here, like the existing CPNI rules, are intended to directly advance both the substantial public interest in consumer privacy as well as Section 222's mandate to protect customer confidentiality, while not being more extensive than necessary to serve those interests, according to the criteria of *Central Hudson*. For customers to be able to protect their privacy, they must have a way to easily locate and exercise their options, and they must be able to give or withhold their consent for uses of their information not directly related to the provision of their service. These proposed rules correspond with well-established rules in the voice context, and allow for a number of uses with no additional approval, or opt-out or opt-in approval, from customers, imposing no more restrictions than are necessary to protect customer privacy and control.

285. *Data Security and Breach Notification.* Section 222 leaves no doubt that every telecommunications carrier has a duty to protect its customers' proprietary information. The Commission has referred specifically to Section 222(a) as imposing security obligations on telecommunications carriers and providing authority to the Commission to adopt security-focused rules, and we have implemented security and data breach obligations on CPNI under the more specific auspices of Section 222(c). We believe that the same authority justifies the revised breach notification requirements we propose in this Notice, including the requirement that carriers notify customers, law enforcement, and the Commission of breaches of customer PI that is not CPNI. We also do not believe that such breach notification requirements, which are common in other sectors and in many states, constitute unjustified compelled speech that implicates the First Amendment.

B. Additional Statutory Authority

286. We also believe that our proposals find support in a number of other statutory provisions, which provide authority to protect against unjust, unreasonable, and unreasonably discriminatory practices; interception or divulgence of communications; and the untimely deployment of advanced telecommunications services. An additional source of authority includes our particular authority over wireless licensees.

1. Sections 201–202 of the Communications Act

287. In the *2015 Open Internet Order,* we interpreted Section 201 and 202 in the broadband Internet access services context through our adoption of the "no-unreasonable interference/disadvantage" standard. That standard, which is codified in our rules at Section 8.11, "is specifically designed to protect against harms to the open nature of the Internet." Of particular relevance for the proceeding initiated by this Notice, we found that "practices that fail to protect the confidentiality of end users' proprietary information, will be unlawful if they unreasonably interfere with or disadvantage end user consumers' ability to select, access or use broadband services, applications, or content." Against that backdrop, we seek comment on how our interpretation of Sections 201 and 202 in the broadband Internet access services context should inform rules adopted in this proceeding to address consumer privacy and security.

288. We also note that Section 5 of the Federal Trade Commission Act declares that unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce are unlawful. There is a distinct congruence between practices that are unfair or deceptive and many practices that are unjust, unreasonable, or unreasonably discriminatory. Indeed, both Commissions have found that Section 201 of the Communications Act and Section 5 of the FTC Act can be read as prohibiting the same types of acts or practices, and the FTC has a rich body of precedent, in enforcement actions and consent orders, that measures privacy and data-security practices against the unfair-or-deceptive standard. Although the FTC lacks statutory authority to prevent common carriers from using such unfair or deceptive acts or practices, we seek comment on the extent to which Section 5 of the FTC Act and the FTC's precedents may inform our consideration of whether practices by common carriers are unjust or unreasonable.

2. Section 705 of the Communications Act

289. Section 705 of the Communications Act has been in place since the adoption of the Communications Act in 1934. Section 705(a) establishes that providers of communications services by wire and radio have obligations not to "divulge or publish the existence, contents, substance, purport, effect, or meaning" of communications that they carry on behalf of others. We believe that Section 705 can thus provide a source of authority for rules protecting the privacy of customer information, including the content of their communications. Do commenters agree? To what extent do Section 705, as well as provisions of Title 18 of the United States Code, currently limit the practices of BIAS providers? To what extent might it be necessary for the Commission to use its authority to interpret and implement Section 705 to protect subscribers to BIAS services?

3. Section 706 of the Telecommunications Act of 1996

290. Section 706(a) of the Telecommunications Act of 1996 directs the Commission to take actions that "shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans." To do so, the Commission may utilize, "in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment." In addition, Section 706(b) provides that the Commission "shall take immediate action to accelerate deployment of such capability by removing barriers to infrastructure investment and by promoting competition in the telecommunications market," if it finds after inquiry that advanced telecommunications capability is not being deployed to all Americans in a reasonable and timely fashion. In *Verizon* v. *FCC,* the DC Circuit upheld the Commission's transparency rule as authorized pursuant to Section 706. In doing so, it upheld the Commission's judgment that Section 706 constitutes an independent source of affirmative statutory authority to regulate BIAS providers. The Commission reaffirmed that view in the *2015 Open Internet Order.*

291. We believe that rules governing the privacy and security practices of BIAS providers, such as those discussed in this Notice, would be independently supported by Section 706. We also believe that the proposed transparency, choice, and security requirements further align with the virtuous cycle of Section 706, since they have the potential to increase customer confidence in BIAS providers' practices, thereby boosting confidence in and therefore use of broadband services, which encourages the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans. We seek comment on this analysis.

4. Title III of the Communications Act

292. Section 303(b) of the Act directs the Commission to, "as public convenience, interest, or necessity requires," "[p]rescribe the nature of the service to be rendered by each class of licensed stations and each station within any class." Section 303(r), furthermore, directs the Commission to make rules and regulations, and prescribe restrictions and conditions, to carry out the Act. In addition, Section 316 authorizes the Commission to adopt new conditions on existing licenses if it determines that such action "will promote the public interest, convenience, and necessity." To the extent that BIAS is provided by licensed entities providing mobile BIAS, these provisions would appear to support adoption of rules such as those we consider in this proceeding. We seek comment on this conclusion.

IV. Procedural Matters

A. Ex Parte Rules

293. This proceeding shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a

method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Accessible Formats

294. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

C. Paperwork Reduction Act

295. This NPRM seeks comment on potential new or revised information collection requirements. If the Commission adopts any new or revised information collection requirements, the Commission will publish a notice in the **Federal Register** inviting the public to comment on the requirements, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might "further reduce the information collection burden for small business concerns with fewer than 25 employees."

D. Contact Person

296. For further information about this proceeding, please contact Sherwin Siy, FCC Wireline Competition Bureau, Competition Policy Division, Room 5–C225, 445 12th Street SW., Washington, DC 20554, (202) 418–2783, *sherwin.siy@fcc.gov*.

V. Ordering Clauses

297. Accordingly, *it is ordered*, pursuant to Sections 1, 2, 4(i)–(j), 201(b), 222, 303(b), 303(r), 316, 338(i), 631, and 705 of the Communications Act of 1934, as amended, and Section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 201(b), 222, 303(b), 303(r), 316, 338(i), 605, and 1302, that this Notice of Proposed Rulemaking *is adopted*.

298. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM or Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided on the front page of this item. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).

A. Need for, and Objectives of, the Proposed Rules

2. In this NPRM, we propose to apply the traditional privacy requirements of the Communications Act to the most significant communications technology of today: broadband Internet access service. Our approach can be simply stated: *First*, consumers must be able to protect their privacy, which requires transparency, choice, and data security. *Second*, BIAS providers are the most important and extensive conduits of consumer information and thus have access to very sensitive and very personal information that could threaten a person's financial security, reveal embarrassing or even harmful details of medical history, or disclose to prying eyes the intimate details of interests, physical presence, or fears. But, *third*, the current federal privacy regime does not now comprehensively apply the traditional principles of privacy protection to these 21st Century telecommunications services provided by broadband networks. That is a gap that must be closed, and this NPRM proposes a way to do so by securing what Congress has commanded—the ability of every telecommunications user to protect his or her privacy.

3. Privacy protects important personal interests. Not just freedom from identity theft or financial loss but also from concerns that intimate, personal details should not become grist for the mills of public embarrassment or harassment or the basis of opaque, but harmful judgments, such as discrimination. The power of modern broadband networks is that they allow consumers to reach from their homes (or cars or sidewalks) to the whole wide world instantaneously. The accompanying concern is that those broadband networks can now stand over the shoulder of every subscriber who surfs the web, sends an email or text, or even walks down a street carrying a mobile device. Absent legally-binding principles, those networks have the ability and incentive to use and share extensive and personal information about their customers. The protection of privacy thus both protects individuals and encourages use of broadband networks.

B. Legal Basis

4. The legal basis for any action that may be taken pursuant to the Notice is contained in Sections 1, 2, 4(i)–(j), 201(b), 222, 303(r), 338(i), and 705 of the Communications Act of 1934, as amended, and Section 706 of the Telecommunications Act of 1996, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 201(b), 222, 303(r), 338(i), 605, and 1302.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

5. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

1. Total Small Entities

6. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three comprehensive small entity size standards that could be directly affected herein. As of 2014, according to the SBA, there were 28.2 million small businesses in the U.S., which represented 99.7% of all businesses in the United States. Additionally, a "small organization is generally any not-for-profit enterprise which is independently owned and operated and not dominant in its field". Nationwide, as of 2007, there were approximately 1,621,215 small organizations. Finally, the term "small governmental

jurisdiction" is defined generally as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand". Census Bureau data for 2011 indicate that there were 90,056 local governmental jurisdictions in the United States. We estimate that, of this total, as many as 89,327 entities may qualify as "small governmental jurisdictions". Thus, we estimate that most local governmental jurisdictions are small.

2. Broadband Internet Access Service Providers

7. The proposed rules would apply to broadband Internet access service providers (BIAS providers). The Economic Census places these firms, whose services might include Voice over Internet Protocol (VoIP), in either of two categories, depending on whether the service is provided over the provider's own telecommunications facilities (*e.g.,* cable and DSL ISPs), or over client-supplied telecommunications connections (*e.g.,* dial-up ISPs). The former are within the category of Wired Telecommunications Carriers, which has an SBA small business size standard of 1,500 or fewer employees. These are also labeled "broadband." The latter are within the category of All Other Telecommunications, which has a size standard of annual receipts of $25 million or less. These are labeled non-broadband. According to Census Bureau data for 2007, there were 3,188 firms in the first category, total, that operated for the entire year. Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. For the second category, the data show that 1,274 firms operated for the entire year. Of those, 1,252 had annual receipts below $25 million per year. Consequently, we estimate that the majority of broadband Internet access service provider firms are small entities.

8. The broadband Internet access service provider industry has changed since this definition was introduced in 2007. The data cited above may therefore include entities that no longer provide broadband Internet access service, and may exclude entities that now provide such service. To ensure that this IRFA describes the universe of small entities that our action might affect, we discuss in turn several different types of entities that might be providing broadband Internet access service. We note that, although we have no specific information on the number of small entities that provide broadband Internet access service over unlicensed spectrum, we include these entities in our Initial Regulatory Flexibility Analysis.

3. Wireline Providers

9. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

10. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by rules adopted pursuant to the Notice.

11. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The closest applicable size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our proposed rules.

12. *Competitive Local Exchange Carriers (Competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and other local service providers are small entities that may be affected by our proposed rules.

13. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

14. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority

of IXCs are small entities that may be affected by our proposed rules.

15. *Operator Service Providers* (*OSPs*). Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 33 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 31 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our proposed rules.

16. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by rules adopted pursuant to the Notice.

4. Wireless Providers—Fixed and Mobile

17. The broadband Internet access service provider category covered by these proposed rules may cover multiple wireless firms and categories of regulated wireless services. Thus, to the extent the wireless services listed below are used by wireless firms for broadband Internet access service, the proposed actions may have an impact on those small businesses as set forth above and further below. In addition, for those services subject to auctions, we note that, as a general matter, the number of winning bidders that claim to qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments and transfers or reportable eligibility events, unjust enrichment issues are implicated.

18. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the Census Bureau has placed wireless firms within this new, broad, economic census category. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For the category of Wireless Telecommunications Carriers (except Satellite), census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more. Since all firms with fewer than 1,500 employees are considered small, given the total employment in the sector, we estimate that the vast majority of wireless firms are small.

19. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions.

20. *1670–1675 MHz Services.* This service can be used for fixed and mobile uses, except aeronautical mobile. An auction for one license in the 1670–1675 MHz band was conducted in 2003. One license was awarded. The winning bidder was not a small entity.

21. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted, the SBA has developed a small business size standard for Wireless Telecommunications Carriers (except Satellite). Under the SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to Commission data, 413 carriers reported that they were engaged in wireless telephony. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Therefore, a little less than one third of these entities can be considered small.

22. *Broadband Personal Communications Service.* The broadband personal communications services (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission initially defined a "small business" for C- and F-Block licenses as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For F-Block licenses, an additional small business size standard for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These small business size standards, in the context of broadband PCS auctions, have been approved by the SBA. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that claimed small business status in the first two C-Block auctions. A total of 93 bidders that claimed small business status won approximately 40 percent of the 1,479 licenses in the first auction for the D, E, and F Blocks. On April 15, 1999, the Commission completed the reauction of 347 C-, D-, E-, and F-Block licenses in Auction No. 22. Of the 57 winning bidders in that auction, 48 claimed small business status and won 277 licenses.

23. On January 26, 2001, the Commission completed the auction of 422 C and F Block Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in that auction, 29 claimed small business status. Subsequent events concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. On February 15, 2005, the Commission completed an auction of 242 C-, D-, E-, and F-Block licenses in Auction No. 58. Of the 24 winning bidders in that auction, 16 claimed small business status and won 156 licenses. On May 21, 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction No. 71. Of the 12 winning bidders in that auction, five claimed small business status and won 18 licenses. On August 20, 2008, the Commission completed the auction of 20 C-, D-, E-, and F-Block Broadband PCS licenses in Auction No. 78. Of the eight winning bidders for Broadband PCS licenses in that auction, six claimed small business status and won 14 licenses.

24. *Specialized Mobile Radio Licenses.* The Commission awards "small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the

800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards "very small entity" bidding credits to firms that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 900 MHz Service. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction began on December 5, 1995, and closed on April 15, 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was held on January 10, 2002 and closed on January 17, 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

25. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000, and was completed on September 1, 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band and qualified as small businesses under the $15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all four auctions, 41 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small businesses.

26. In addition, there are numerous incumbent site-by-site SMR licenses and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, we do not know how many of these firms have 1,500 or fewer employees, which is the SBA-determined size standard. We assume, for purposes of this analysis, that all of the remaining extended implementation authorizations are held by small entities, as defined by the SBA.

27. *Lower 700 MHz Band Licenses.* The Commission previously adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A "very small business" is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the lower 700 MHz Service had a third category of small business status for Metropolitan/Rural Service Area (MSA/RSA) licenses—"entrepreneur"—which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were won by 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. A second auction commenced on May 28, 2003, closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. On July 26, 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz band (Auction No. 60). There were three winning bidders for five licenses. All three winning bidders claimed small business status.

28. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order.* An auction of 700 MHz licenses commenced January 24, 2008 and closed on March 18, 2008, which included, 176 Economic Area licenses in the A Block, 734 Cellular Market Area licenses in the B Block, and 176 EA licenses in the E Block. Twenty winning bidders, claiming small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years) won 49 licenses. Thirty three winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) won 325 licenses.

29. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order,* the Commission revised its rules regarding Upper 700 MHz licenses. On January 24, 2008, the Commission commenced Auction 73 in which several licenses in the Upper 700 MHz band were available for licensing: 12 Regional Economic Area Grouping licenses in the C Block, and one nationwide license in the D Block. The auction concluded on March 18, 2008, with 3 winning bidders claiming very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years) and winning five licenses.

30. *700 MHz Guard Band Licensees.* In 2000, in the 700 MHz Guard Band Order, the Commission adopted size standards for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. SBA approval of these definitions is not required. An auction of 52 Major Economic Area licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

31. *Air-Ground Radiotelephone Service.* The Commission has previously used the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-

Ground Radiotelephone Service, and under that definition, we estimate that almost all of them qualify as small entities under the SBA definition. For purposes of assigning Air-Ground Radiotelephone Service licenses through competitive bidding, the Commission has defined "small business" as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $40 million. A "very small business" is defined as an entity that, together with controlling interests and affiliates, has average annual gross revenues for the preceding three years not exceeding $15 million. These definitions were approved by the SBA. In May 2006, the Commission completed an auction of nationwide commercial Air-Ground Radiotelephone Service licenses in the 800 MHz band (Auction No. 65). On June 2, 2006, the auction closed with two winning bidders winning two Air-Ground Radiotelephone Services licenses. Neither of the winning bidders claimed small business status.

32. *AWS Services (1710–1755 MHz and 2110–2155 MHz bands (AWS–1); 1915–1920 MHz, 1995–2000 MHz, 2020–2025 MHz and 2175–2180 MHz bands (AWS–2); 2155–2175 MHz band (AWS–3)).* For the AWS–1 bands, the Commission has defined a "small business" as an entity with average annual gross revenues for the preceding three years not exceeding $40 million, and a "very small business" as an entity with average annual gross revenues for the preceding three years not exceeding $15 million. For AWS–2 and AWS–3, although we do not know for certain which entities are likely to apply for these frequencies, we note that the AWS–1 bands are comparable to those used for cellular service and personal communications service. The Commission has not yet adopted size standards for the AWS–2 or AWS–3 bands but proposes to treat both AWS–2 and AWS–3 similarly to broadband PCS service and AWS–1 service due to the comparable capital requirements and other factors, such as issues involved in relocating incumbents and developing markets, technologies, and services.

33. *3650–3700 MHz band.* In March 2005, the Commission released a *Report and Order and Memorandum Opinion and Order* that provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (*i.e.,* 3650–3700 MHz). As of April 2010, more than 1270 licenses have been granted and more than 7433 sites have been registered. The Commission has not developed a definition of small entities applicable to 3650–3700 MHz band nationwide, non-exclusive licensees. However, we estimate that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

34. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. They also include the Local Multipoint Distribution Service (LMDS), the Digital Electronic Message Service (DEMS), and the 24 GHz Service, where licensees can choose between common carrier and non-common carrier status. At present, there are approximately 36,708 common carrier fixed licensees and 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. There are approximately 135 LMDS licensees, three DEMS licensees, and three 24 GHz licensees. The Commission has not yet defined a small business with respect to microwave services. For purposes of the IRFA, we will use the SBA's definition applicable to Wireless Telecommunications Carriers (except satellite)—*i.e.,* an entity with no more than 1,500 persons. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 36,708 common carrier fixed licensees and up to 59,291 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

35. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (MDS) and Multichannel Multipoint Distribution Service (MMDS) systems, and "wireless cable," transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (BRS) and Educational Broadband Service (EBS) (previously referred to as the Instructional Television Fixed Service (ITFS)). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules.

36. In 2009, the Commission conducted Auction 86, the sale of 78 licenses in the BRS areas. The Commission offered three levels of bidding credits: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) received a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) received a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) received a 35 percent discount on its winning bid. Auction 86 concluded in 2009 with the sale of 61 licenses. Of the ten winning bidders, two bidders that claimed small business status won 4 licenses; one bidder that claimed very small business status won three licenses; and two bidders that claimed entrepreneur status won six licenses.

37. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,436 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we estimate that at least 2,336 licensees are small businesses. Since 2007, Cable

Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use the most current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2007, there were a total of 996 firms in this category that operated for the entire year. Of this total, 948 firms had annual receipts of under $10 million, and 48 firms had receipts of $10 million or more but less than $25 million. Thus, the majority of these firms can be considered small.

5. Satellite Service Providers

38. *Satellite Telecommunications Providers.* Two economic census categories address the satellite industry. The first category has a small business size standard of $30 million or less in average annual receipts, under SBA rules. The second has a size standard of $30 million or less in annual receipts.

39. The category of Satellite Telecommunications "comprises establishments primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." For this category, Census Bureau data for 2007 show that there were a total of 570 firms that operated for the entire year. Of this total, 530 firms had annual receipts of under $30 million, and 40 firms had receipts of over $30 million. Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by our action.

40. The second category of Other Telecommunications comprises, *inter alia,* "establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems." For this category, Census Bureau data for 2007 show that there were a total of 1,274 firms that operated for the entire year. Of this total, 1,252 had annual receipts below $25 million per year. Consequently, we estimate that the majority of All Other Telecommunications firms are small entities that might be affected by our action.

6. Cable Service Providers

41. Because Section 706 requires us to monitor the deployment of broadband using any technology, we anticipate that some broadband service providers may not provide telephone service. Accordingly, we describe below other types of firms that may provide broadband services, including cable companies, MDS providers, and utilities, among others.

42. *Cable and Other Program Distributors.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: "This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies." The SBA has developed a small business size standard for this category, which is: All such firms having 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use current census data that are based on the previous category of Cable and Other Program Distribution and its associated size standard; that size standard was: All such firms having $13.5 million or less in annual receipts. According to Census Bureau data for 2007, there were a total of 2,048 firms in this category that operated for the entire year. Of this total, 1,393 firms had annual receipts of under $10 million, and 655 firms had receipts of $10 million or more. Thus, the majority of these firms can be considered small.

43. *Cable Companies and Systems.* The Commission has also developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers, nationwide. Industry data shows that there were 1,141 cable companies at the end of June 2012. Of this total, all but ten cable operators nationwide are small under this size standard. In addition, under the Commission's rules, a "small system" is a cable system serving 15,000 or fewer subscribers. Current Commission records show 4,945 cable systems nationwide. Of this total, 4,380 cable systems have less than 20,000 subscribers, and 565 systems have 20,000 or more subscribers, based on the same records. Thus, under this standard, we estimate that most cable systems are small entities.

44. *Cable System Operators.* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that all but ten incumbent cable operators are small entities under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

7. All Other Telecommunications

45. The Census Bureau defines this industry as including "establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite

systems. Establishments providing Internet services or Voice over Internet Protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry." The SBA has developed a small business size standard for this category; that size standard is $32.5 million or less in average annual receipts. According to Census Bureau data for 2007, there were 2,383 firms in this category that operated for the entire year. Of these, 2,346 firms had annual receipts of under $25 million and 37 firms had annual receipts of $25 million or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the Further Notice.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

46. This Notice of Proposed Rulemaking proposes and/or seeks comment on several regulations that could affect small providers, including (1) the provision of meaningful notice of privacy policies; (2) customer approval requirements for the use and disclosure of customer PI; (3) the use and disclosure of aggregate customer PI; (4) the security of customer proprietary information; (5) data breach notification; (6) other practices implicating privacy; and (7) dispute resolution.

47. *Meaningful Notice of Privacy Policies.* As discussed above, this Notice proposes to require BIAS providers to provide meaningful notice of privacy policies. The Notice proposes rules and/or seeks comment on the content, location, timing, and formatting of different types of privacy notices. In order to promote transparency and inform all BIAS customers of their privacy choices and security, these proposed rules will apply to small providers as well as large providers. The Notice seeks comment on alternative ways of achieving these goals. The Notice seeks comment on the compliance costs of these proposals for small providers. The Notice also seeks comment on whether to harmonize these proposals with existing regulations regarding voice CPNI, and whether such harmonization can reduce compliance burdens.

48. *Customer Approval Requirements.* As discussed above, this Notice proposes to require BIAS providers to obtain customer approval in order to use, access, or disclose customer proprietary information. This Notice proposes and/or seeks comment on (1) the contexts in which BIAS providers need to seek opt-out and opt-in consent for uses of customer information; (2) the requirements BIAS providers must meet to ensure that customers can easily learn about and effectively express their choices; (3) the ways in which BIAS providers should document their compliance with customers' choices. In order to protect the privacy choices of all BIAS customers, these proposals will apply to small providers as well as large providers. The Notice seeks comment on the effects of these proposals on small providers, as well as whether and how to harmonize these proposals with existing regulations regarding voice CPNI.

49. *Use and Disclosure of Aggregate Customer PI.* As discussed above, this Notice proposes rules and seeks comment on BIAS provider use, access, and disclosure of aggregate customer PI. Our proposed rules would allow BIAS providers, including small providers, to use, access, and disclose aggregate customer PI if the provider (1) determines that the aggregated customer PI is not reasonably linkable to a specific individual or device; (2) publicly commits to maintain and use the aggregate data in a non-individually identifiable fashion and to not attempt to re-identify the data; (3) contractually prohibits any entity to which it discloses or permits access to the aggregate data from attempting to re-identify the data; and (4) exercises reasonable monitoring to ensure that those contracts are not violated. In order to promote all customers' privacy interests in the transparency, choice, and security of how their data is used, these proposals will apply to small providers as well as large providers. We also seek comment on alternative approaches to handling aggregate customer PI, as well as the burdens our proposed rules would place on small providers.

50. *Securing Customer Proprietary Information.* As discussed above, this Notice proposes rules and seeks comment on requiring BIAS providers to protect the security and confidentiality of customer PI by adopting security practices calibrated to the nature and scope of the BIAS provider's activities, the sensitivity of the underlying data, and technical feasibility. These proposals include requiring BIAS providers to protect against unauthorized use or disclosure of customer PI by (1) conducting risk management assessments; (2) training employees to protect against reasonably anticipated unauthorized use or disclosure of customer PI; (3) ensuring reasonable due diligence and corporate accountability; and (4) requiring customer authentication for access to customer proprietary information. We seek comment on how to hold BIAS providers accountable for third party misuse of customer PI and whether we should impose reasonable data collection, retention, and disposal rules. In order to protect the security of all BIAS customers' private information, these proposals will apply to small providers as well as large providers. We also seek comment on alternative approaches to securing customer PI, the burdens the proposed rules would place on small providers, and whether to harmonize our security proposals with existing regulations for voice CPNI.

51. *Data Breach Notification Requirements.* As discussed above, the Notice proposes rules and seeks comment on requiring telecommunications providers to give customers, the Commission, and other law enforcement notice when a breach of customer PI has occurred. In addition, the Notice proposes to harmonize the existing voice CPNI data breach rules with these proposed rules for BIAS provider data breaches. These proposals include (1) requiring telecommunications providers to notify customers within ten days after the discovery of a data breach, subject to law enforcement needs, under circumstances enumerated by the Commission; (2) the necessary content of a customer data breach notification; (3) requiring telecommunications providers to notify the Commission within seven days, and to notify the Federal Bureau of Investigation and the U.S. Secret Service, in the event of a data breach affecting more than 5,000 customers, within seven days; (4) two-year record retention rules for data breaches; and (5) seeking comment on how to address third party data breaches. In order to promote transparency and security for all telecommunications customers, these proposed rules will apply to small providers as well as large providers. The Notice also seeks comment on alternative data breach notification approaches as well as the burdens that our proposals will have on small providers.

52. *Other Practices Implicating Privacy.* As discussed above, the Notice seeks comment on whether there are certain BIAS provider practices implicating privacy that our rules should prohibit, or to which we should apply heightened notice and choice requirements. In particular, the Notice proposes to prohibit service offers conditioned on the waiver of privacy rights. The Notice also seeks comment on how to address (1) financial inducement practices; (2) deep packet inspection for purposes other than

network management; and (3) persistent tracking technologies. In order to protect the privacy of all BIAS customers, any such rules may be applied to small providers as well as large providers. In the course of seeking comment on these subjects, the Notice seeks comment on alternative approaches and burdens to small providers.

53. *Dispute Resolution.* As discussed above, the Notice seeks comment on whether the Commission's current informal complaint resolution process is sufficient or if BIAS providers should offer additional dispute resolution mechanisms for broadband privacy disputes. In order to promote all customers' privacy interests in the transparency, choice, and security of how their data is used, any such resulting rules may apply to small providers as well as large providers. The Notice seeks comment as well on alternative approaches as well as the burdens any approaches would have on small providers.

E. Steps Take To Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered

54. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."

55. The Commission expects to consider the economic impact on small providers, as identified in comments filed in response to the Notice and this IRFA, in reaching its final conclusions and taking action in this proceeding. Moreover, in formulating these rules, we seek to provide flexibility for small providers whenever possible, by setting out standards and goals for the providers to reach in whichever way is most efficient for them.

56. *Definitions.* As discussed above, in proposing definitions to accompany these proposed rules we seek comment on alternative formulations, including alternatives that could reduce burdens on small providers. We seek comment on alternative definitions of the terms affiliate; customer; CPNI; customer PI; opt-out and opt-in approval; communications-related services; breach; and other terms and ask how such alternatives could affect the benefits and burdens to small providers. In addition to these requests for comment, we seek comment generally on alternative definitions that would reduce burdens on small providers.

57. *Providing Meaningful Notice of Privacy Policies.* As discussed above, we seek comment on alternative approaches to our proposed privacy notice rules that would alleviate burdens on small providers. In particular, we seek comment on notice practices currently in use and industry best practices, in order to develop efficient and effective options. We seek comment on the compliance burden associated with our proposed rules and alternatives that would alleviate the burden on small providers in particular. We seek comment on whether a privacy policy safe harbor rule would ease the regulatory burden on small providers. We also seek comment on other alternatives for simplifying and standardizing privacy notices and whether these approaches, such as the creation of a privacy dashboard, could alleviate burdens on small providers. For notices of material changes to privacy policies, we specifically seek comment on burdens, compliance costs, and alternatives for small providers.

58. *Customer Approval Requirements for the Use and Disclosure of Customer PI.* As discussed above, we seek comment on alternative customer approval rules that could alleviate burdens on small providers while preserving the ability of all BIAS customers to have meaningful choices in the use and disclosure of their personal information. Choice is a critical component of protecting the confidentiality of customer proprietary information. We seek comment on ways to minimize the burden of our proposed customer choice framework on small BIAS providers. In particular, we seek comment on whether there are any small-provider-specific exemptions that we might build into our proposed approval framework. For example, should we allow small providers who have already obtained customer approval to use their customers' proprietary information to grandfather in those approvals? Should this be allowed for third parties? Should we exempt providers that collect data from fewer than 5,000 customers a year, provided they do not share customer data with third parties? Are there other such policies that would minimize the burden of our proposed rules on small providers? If so, would the benefits to small providers of any suggested exemptions outweigh the potential negative impact of such an exemption on the privacy interests of the customers of small BIAS providers? Further, were we to adopt an exemption, how would we define what constitutes a "small provider" for purposes of that exemption?

59. *Use and Disclosure of Aggregate Customer PI.* As discussed above, we seek comment on alternative approaches to the use and disclosure of aggregate customer PI that could alleviate burdens on small BIAS providers. In particular, we seek comment on an approach to aggregate customer PI that is similar to that used by HIPAA, and whether such an approach would be less burdensome to small BIAS providers. We also ask that as commenters consider whether we should adopt each of the prongs of our proposed rule, and any proposed alternatives, that they also consider how we could limit any burdens associated with compliance, particularly for small providers.

60. *Securing Customer Proprietary Information.* As discussed above, we seek comment on alternative approaches to secure customer proprietary information that could alleviate burdens on small BIAS providers. We propose that any specific security measures employed by a BIAS provider take into consideration the nature and scope of the BIAS provider's activities, because we believe that this sliding scale approach will afford sufficient flexibility for small providers while still protecting their customers. The Commission has previously explained that "privacy is a concern which applies regardless of carrier size or market share." However, we recognize that the same data security protections may not be necessary in all cases. For example, a small provider with only a few customers may not store, use, or disclose customer PI in the same manner as a large provider. In such a case, what constitutes "reasonable" safeguards might be different. We seek comment on current data security practices in the industry and alternative structures that can build on current best practices to alleviate burdens. We seek comment on alternatives to our proposed rule on account change notifications that could reduce burdens on small providers. When discussing whether to require multi-factor authentication or contractual data security commitments from third party recipients of customer PI, we seek comment on the burdens such proposals could place on small providers and alternatives that could reduce such burdens. We also ask that comments

and proposals regarding data destruction discuss potential burdens for small providers.

61. *Data Breach Notification Requirements.* As discussed above, we seek comment on alternative approaches to data breach notifications that could alleviate burdens on small providers. In particular we propose a threshold of 5,000 affected customers for breach notification of the Federal Bureau of Investigation and U.S. Secret Service, and seek comment on how such a threshold could benefit or burden small providers. We also seek comment on record retention rules and alternatives that could reduce compliance burdens.

62. *Other Practices Implicating Privacy.* As discussed above, in seeking comment on whether to prohibit specific practices implicating privacy, we also seek comment on how proposals and alternatives can alleviate burdens on small providers. In particular, when seeking comment on whether heightened notice and choice requirements are necessary for some practices, we specifically ask commenters to address the burdens of their proposals on small providers, and alternatives to reduce such burdens.

63. *Dispute Resolution.* As discussed above, in seeking comment on potential approaches to dispute resolution, we also seek comment on how proposals and alternatives can benefit or burden small providers.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

List of Subjects in 47 CFR Part 64

Claims, Communications common carriers, Computer technology, Credit, Foreign relations, Individuals with disabilities, Political candidates, Radio, Reporting and recordkeeping requirements, Telecommunications, Telegraph, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to revise Part 64 of Title 47 of the Code of Federal Regulations as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 is revised to read as follows:

Authority: 47 U.S.C. 154, 254(k), 403, Pub. L. 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 202, 218, 222, 225, 226, 227, 228, 254(k), 301, 303, 332, 338, 551, 616, 620, 705, 1302, and the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, unless otherwise noted.

Subpart U—Customer Proprietary Network Information

■ 2. Amend § 64.2003 as follows:

■ a. Redesignate paragraphs (d) through (r) as indicated in the table below:

Old paragraph	New paragraph
(d)	(e)
(e)	(f)
(f)	(g)
(g)	(i)
(h)	(j)
(i)	(k)
(j)	(l)
(k)	(m)
(l)	(n)
(m)	(p)
(n)	(q)
(o)	(r)
(p)	(s)
(q)	(t)
(r)	(u)

■ b. Add new paragraphs (d), (h), and (o), and revise newly redesignated paragraphs (c), (j), (k), (l), (r), and (s) to read as follows:

§ 64.2003 Definitions.

* * * * *

(c) *Affiliate.* The term "affiliate" has the same meaning given such term in Section 3 of the Communications Act of 1934, as amended, 47 U.S.C. 153.

(d) *Breach of security.* The terms "breach of security," "breach," or "data breach," mean any instance in which a person, without authorization or exceeding authorization, has gained access to, used, or disclosed customer proprietary information.

* * * * *

(h) *Customer proprietary information.* The term "customer proprietary information" or "customer PI" means:

(1) Customer proprietary network information; and

(2) Personally identifiable information (PII) a carrier acquires in connection to its provision of telecommunications service.

* * * * *

(j) *Customer premises equipment (CPE).* The term "customer premises equipment (CPE)" has the same meaning given to such term in Section 3 of the Communications Act of 1934, as amended, 47 U.S.C. 153.

(k) *Information services typically provided by telecommunications carriers.* The phrase "information services typically provided by telecommunications carriers" means only those information services (as defined in Section 3 of the Communication Act of 1934, as amended, 47 U.S.C. 153) that are typically provided by telecommunications carriers, such as voice mail services. Such phrase "information services typically provided by telecommunications carriers," as used in this subpart, shall not include retail consumer services provided using Internet Web sites (such as travel reservation services or mortgage lending services), whether or not such services may otherwise be considered to be information services.

(l) *Local exchange carrier (LEC).* The term "local exchange carrier (LEC)" has the same meaning given to such term in Section 3 of the Communications Act of 1934, as amended, 47 U.S.C. 153.

* * * * *

(o) *Personally Identifiable Information.* The term "personally identifiable information" or "PII" means any information that is linked or linkable to an individual.

* * * * *

(r) *Telecommunications carrier or carrier.* The terms "telecommunications carrier" or "carrier" shall have the same meaning as set forth in Section 3 of the Communications Act of 1934, as amended, 47 U.S.C. 153. For the purposes of this subpart, the term "telecommunications carrier" or "carrier" shall include an entity that provides interconnected VoIP service, as that term is defined in § 9.3 of this chapter, and shall exclude an entity that provides broadband Internet access service, as that term is defined in § 8.2 of this chapter.

(s) *Telecommunications service.* The term "telecommunications service" has the same meaning given to such term in Section 3 of the Communications Act of 1934, as amended, 47 U.S.C. 153.

* * * * *

■ 3. Revise § 64.2011 to read as follows:

§ 64.2011 Data breach notification.

(a) *Customer notification.* A telecommunications carrier must notify affected customers of covered breaches of customer PI no later than 10 days after the discovery of the breach, subject to law enforcement needs.

(1) A telecommunications carrier required to provide notification to a customer under this paragraph may provide such notice by any of the following methods:

(i) Written notification, sent to the postal address of the customer provided by the customer for contacting that customer;

(ii) Email or other electronic means using information provided by the customer for contacting that customer for data breach notification purposes.

(2) The customer notification required to be provided under this section must include:

(i) The date, estimated date, or estimated date range of the breach of security;

(ii) A description of the customer PI that was used, disclosed, or accessed, or reasonably believed to have been used, disclosed, or accessed, by a person without or exceeding authorization as a part of the breach of security;

(iii) Information that the customer can use to contact the telecommunications carrier to inquire about the breach of security and the customer PI that the telecommunications carrier maintains about that customer;

(iv) Information about how to contact the Federal Communications Commission and any state regulatory agencies relevant to the customer and the service; and

(v) Information about the national credit-reporting agencies and the steps customers can take to guard against identity theft, including any credit monitoring or reporting the telecommunications carrier is offering customers affected by the breach of security.

(3) If a federal law enforcement agency determines that the notification to customers required under this paragraph would interfere with a criminal or national security investigation, such notification shall be delayed upon the written request of the law enforcement agency for any period which the law-enforcement agency determines is reasonably necessary. A law enforcement agency may, by a subsequent written request, revoke such delay or extend the period set forth in the original request made under this paragraph by a subsequent request if the law enforcement agency determines that further delay is necessary.

(b) *Commission notification.* A telecommunications carrier must notify the Federal Communications Commission of any breach of customer PI no later than seven days after discovering such breach. Such notification shall be made electronically by means of a reporting system that the Commission makes available on its Web site.

(c) *Federal law enforcement notification.* A telecommunications carrier must notify the Federal Bureau of Investigation (FBI) and the U.S. Secret Service (Secret Service) whenever a breach is reasonably believed to have compromised the customer PI of more than 5,000 individuals, no later than seven (7) days after discovery of the breach, and at least three (3) days before notification to the affected customers. Such notification shall be made through a central reporting facility. The Commission will maintain a link to the reporting facility on its Web site.

(d) *Recordkeeping.* A telecommunications carrier must maintain a record of any breaches of security discovered and notifications made to customers, the Commission, the FBI, and the Secret Service pursuant to this section. The record must include, if available, dates of discovery and notification, a detailed description of the customer PI that was the subject of the breach, and the circumstances of the breach. Telecommunications carriers shall retain such records for a minimum of 2 years.

■ 4. Add subpart GG to part 64 as follows:

Subpart GG—Privacy of BIAS Customer Information

Sec.

64.7000 Definitions.
64.7001 Notice requirements for providers of broadband Internet access services.
64.7002 Customer approval requirements.
64.7003 Documenting compliance with customer approval requirements.
64.7004 Service offers conditioned on the waiver of privacy rights.
64.7005 Data security requirements for broadband Internet access service providers.
64.7006 Breach notification.
64.7007 Effect on state law.

§ 64.7000 Definitions.

(a) *Aggregate customer proprietary information.* The terms "aggregate customer proprietary information" or "aggregate customer PI" means collective data that relates to a group or category of services or customers, from which individual customer identities and characteristics have been removed.

(b) *Breach of security.* The terms "breach of security," "breach", or "data breach," mean any instance in which a person, without authorization or exceeding authorization, has gained access to, used, or disclosed customer proprietary information.

(c) *Broadband Internet Access Service (BIAS).* The term "broadband Internet access services" or "BIAS" has the same meaning given such term in § 8.2(a) of this chapter.

(d) *Broadband Internet access service provider.* The term "broadband Internet access service provider" or "BIAS provider" means a person or entity engaged in the provision of BIAS.

(e) *Customer.* The term "customer" means:

(1) A current or former, paying or non-paying, subscriber to a broadband Internet access service; or

(2) An applicant for a broadband Internet access service.

(f) *Customer proprietary information.* The term "customer proprietary information" or "customer PI" means:

(1) Customer proprietary network information; and

(2) Personally identifiable information (PII) a BIAS provider acquires in connection to its provision of BIAS.

(g) *Customer proprietary network information.* The term "customer proprietary network information (CPNI)" has the same meaning given to such term in the Communications Act of 1934, as amended, 47 U.S.C. 222(h)(1).

(h) *Opt-in approval.* The term "opt-in approval" means a method for obtaining customer consent to use, disclose, or permit access to the customer's proprietary information that requires that the BIAS provider obtain affirmative, express consent from the customer allowing the requested usage, disclosure, or access to the customer PI, consistent with the requirements set forth in § 64.7002 of this subpart.

(i) *Opt-out approval.* The term "opt-out approval" means a method for obtaining customer consent to use, disclose, or permit access to the customer's proprietary information under which a customer is deemed to have consented to the use, disclosure, or access to the customer's covered information if the customer has failed to object thereto after the BIAS provider's request for consent consistent with the requirements set forth in § 64.7002 of this subpart.

(j) *Personally Identifiable Information.* The term "personally identifiable information" or "PII" means any information that is linked or linkable to an individual.

§ 64.7001 Notice requirements for providers of broadband Internet access services.

(a) *Providing notice of privacy policies.* A BIAS provider must clearly and conspicuously notify its customers of its privacy policies. The notice must:

(1) Specify and describe:

(i) The types of customer PI that the BIAS provider collects by virtue of its provision of broadband service;

(ii) How the BIAS provider uses, and under what circumstances it discloses, each type of customer PI that it collects; and

(iii) The categories of entities that will receive the customer PI from the BIAS provider and the purposes for which the customer PI will be used by each category of entities.

(2) Advise customers of their opt-in and opt-out rights with respect to their own proprietary information, and provide access to a simple, easy-to-access method for customers to provide or withdraw consent to use, disclose, or provide access to customer PI for purposes other than the provision of BIAS. Such method shall be persistently available and made available at no additional cost to the customer.

(3) Explain that a denial of approval to use, disclose, or permit access to customer PI for purposes other than providing BIAS will not affect the provision of any services to which the customer subscribes. However, the provider may provide a brief description, in clear and neutral language, describing any consequences directly resulting from the lack of access to the customer PI.

(4) Explain that any approval, denial, or withdrawal of approval for the use of the customer PI for any purposes other than providing BIAS is valid until the customer affirmatively revokes such approval or denial, and inform the customer of his or her right to deny or withdraw access to such PI at any time. However, the notice must also explain that the provider may be compelled to disclose a customer's PI when such disclosure is provided for by other laws.

(5) Be comprehensible and not misleading.

(6) Be clearly legible, use sufficiently large type, and be displayed in an area so as to be readily apparent to the customer; and

(7) Be completely translated into another language if any portion of the notice is translated into that language.

(b) *Timing.* Notice required under paragraph (a) of this section must:

(1) Be made available to prospective customers at the point of sale, prior to the purchase of BIAS, whether such purchase is being made in person, online, over the telephone, or via some other means; and

(2) Be made persistently available via a link on the BIAS provider's homepage, through the BIAS provider's mobile application, and through any functional equivalent to the provider's homepage or mobile application.

(c) *Material changes in a BIAS provider's privacy policies.* A BIAS provider must provide existing customers with advanced notice of material changes to the BIAS provider's privacy policies. Such notice must:

(1) Be clearly and conspicuously provided through each of the following means:

(i) Email or another electronic means of communication agreed upon by the customer and BIAS provider;

(ii) On customers' bills for BIAS; and

(iii) Via a link on the BIAS provider's homepage, mobile application, and any functional equivalent.

(2) Provide a clear, conspicuous, and comprehensible explanation of:

(i) The changes made to the BIAS provider's privacy policies, including any changes to what customer PI the BIAS provider collects, and how it uses, discloses, or permits access to such information;

(ii) The extent to which the customer has a right to disapprove such uses, disclosures, or access to such information and to deny or withdraw access to the customer PI at any time; and

(iii) The precise steps the customer must take in order to grant or deny access to the customer PI. The notice must clearly explain that a denial of approval will not affect the provision of any services to which the customer subscribes. However, the provider may provide a brief statement, in clear and neutral language, describing consequences directly resulting from the lack of access to the customer PI. If accurate, a provider may also explain in the notice that the customer's approval to use the customer's PI may enhance the provider's ability to offer products and services tailored to the customer's needs.

(3) Explain that any approval or denial of approval for the use of customer PI for purposes other than providing BIAS is valid until the customer affirmatively revokes such approval or denial.

(4) Be comprehensible and not misleading.

(5) Be clearly legible, use sufficiently large type, and be placed in an area so as to be readily apparent to customers.

(6) Have all portions of the notice translated into another language if any portion of a notice is translated into that language.

§ 64.7002 Customer approval requirements.

Except as described in paragraph (a) of this section, a BIAS provider may not use, disclose, or provide access to customer PI except with the approval of a customer.

(a) *Approval for use, disclosure, or permitting access inferred.* A customer is considered to have provided approval for the customer's BIAS provider to use, disclose, or permit access to customer PI for the following purposes:

(1) In its provision of the broadband Internet access service from which such information is derived, or in its provision of services necessary to, or used in, the provision of such broadband service.

(2) To initiate, render, bill and collect for broadband Internet access service, and closely related services, *e.g.*, tech support related to the broadband Internet access services.

(3) To protect the rights or property of the BIAS provider, or to protect users of the broadband Internet access service and other BIAS providers from fraudulent, abusive, or unlawful use of the broadband Internet access service.

(4) To provide any inbound marketing, referral, or administrative services to the customer for the duration of the interaction, if such interaction was initiated by the customer and the customer approves of the use of such information to provide such service.

(5) To support queries by Public Safety Answering Points and other authorized emergency personnel pursuant to the full range of NG911 calling alternatives (including voice, text, video and data); to inform the user's legal guardian or members of the user's immediate family of the user's location in an emergency situation that involves the risk of death or serious physical harm; or to providers of information or database management services solely for purposes of assisting in the delivery of emergency services in response to an emergency.

(6) As otherwise required by law.

(b) *Approval for use inferred.* A BIAS provider may use customer PI for the purpose of marketing additional BIAS offerings in the same category of service (*e.g.*, fixed or mobile BIAS) to the customer, when the customer already subscribes to that category of service from the same provider, without further customer approval.

(c) *Notice and solicitation required.* Except as described in paragraph (a) of this section, a BIAS provider must solicit customer approval, as provided for in paragraphs (e) and (f) of this section, when it intends to first use, disclose, or provide access to the customer's proprietary information and in so doing must clearly and conspicuously disclose:

(1) The types of customer PI for which it is seeking customer approval to use, disclose or permit access to;

(2) The purposes for which such customer PI will be used; and

(3) The entities or types of entities to which it intends to disclose or provide access to such customer PI.

(d) *Method for solicitation for customer approval.* A BIAS provider must make available a simple, easy-to-access method for customers to provide or withdraw consent at any time. Such method must be clearly disclosed, persistently available, and made available at no additional cost to the customer. The customer's action must be given effect promptly after the decision to provide or withdraw consent is communicated to the BIAS provider.

(e) *Opt-Out approval required.* Except as otherwise provided in paragraph (a) of this section, a BIAS provider must obtain opt-out or opt-in approval from a customer to:

(1) Use customer PI for the purpose of marketing communications-related services to that customer; and

(2) Disclose or permit access to customer PI to its affiliates that provide communications-related services for the purpose of marketing communications-related services to that customer.

(f) *Opt-In approval required.* Except as otherwise provided, a BIAS provider must obtain customer opt-in approval to use, disclose, or permit access to customer PI.

(g) *Use and disclosure of aggregate customer PI.* A BIAS provider may use, disclose, and permit access to aggregate customer PI other than for the purpose of providing BIAS and for services necessary to, or used in, the provision of BIAS, if the BIAS provider:

(1) Determines that the aggregated customer PI is not reasonably linkable to a specific individual;

(2) Publicly commits to maintain and use the aggregate customer PI in a non-individually identifiable fashion and to not attempt to re-identify such information;

(3) Contractually prohibits any entity to which it discloses or permits access to the aggregate customer PI from attempting to re-identify such information; and

(4) Exercises reasonable monitoring to ensure that those contracts are not violated.

For purposes of this section, the burden of proving that individual customer identities and characteristics have been removed from aggregate customer PI rests with the BIAS provider.

§ 64.7003 Documenting compliance with customer approval requirements.

A BIAS provider must implement a system by which the status of a customer's approval to use, disclose, and provide access to customer PI can be clearly established both prior to and after its use, disclosure, or access. A BIAS provider must:

(a) Train its personnel as to when they are and are not authorized to use, disclose, or permit access to customer PI and have an express disciplinary process in place.

(b) Maintain a record of all instances where customer PI was disclosed to or accessed by third parties for at least one year. The record must include a description of the specific customer PI that was disclosed to or accessed by third parties, a list of the specific third parties who received the customer PI, and the basis for disclosing or providing access to such information to third parties.

(c) Maintain a record of all customer notifications, whether oral, written, or electronic, for at least one year.

(d) Establish a supervisory review process regarding the provider's compliance with the rules in this subpart.

(e) Provide written notice to the Commission within five days of the discovery of any instance where the opt-out mechanisms do not work properly, to such a degree that consumers' inability to opt-out is more than an anomaly; or the provider used, disclosed, or permitted access to customer PI subject to opt-in approval requirements without first having received opt-in approval. Such notice must be submitted even if the provider offers other methods by which customers may opt-out. The notice shall include:

(1) The provider's name;

(2) A description of the opt-out mechanism(s) at issue and the problem(s) experienced, if relevant;

(3) A description of:

(i) Any customer PI used, disclosed, or accessed without opt-out or opt-in approval;

(ii) With whom or by whom such customer PI has been used, disclosed, or accessed;

(iii) For what purposes such customer PI was used, disclosed, or accessed; and

(iv) Over what period of time such customer PI was used, disclosed, or accessed;

(4) The remedy proposed and when it will be or was implemented; and

(5) A copy of the notice provided contemporaneously to customers.

§ 64.7004 Service offers conditioned on the waiver of privacy rights.

A BIAS provider is prohibited from conditioning offers to provide broadband Internet access service on a customer's agreement to waive privacy rights guaranteed by law or regulation. A BIAS provider is further prohibited from discontinuing or otherwise refusing to provide broadband Internet access service due to a customer's refusal to waive any such privacy rights.

§ 64.7005 Data security requirements for broadband Internet access service providers.

(a) *Data security requirements.* A BIAS provider must ensure the security, confidentiality, and integrity of all customer PI the BIAS provider receives, maintains, uses, discloses, or permits access to from any unauthorized uses or disclosures, or uses exceeding authorization. At minimum, this requires a BIAS provider to:

(1) Establish and perform regular risk management assessments and promptly address any weaknesses in the provider's data security system identified by such assessments;

(2) Train employees, contractors, and affiliates that handle customer PI about the BIAS provider's data security procedures;

(3) Designate a senior management official with responsibility for implementing and maintaining the broadband provider's information security measures;

(4) Establish and use robust customer authentication procedures to grant customers or their designees' access to customer PI; and

(5) Notify customers of account changes, including attempts to access customer PI, in order to protect against fraudulent authentication.

(b) A BIAS provider may employ any security measures that allow the provider to reasonably implement the requirements set forth in this section, and in doing so must take into account, at minimum:

(1) The nature and scope of the BIAS provider's activities;

(2) The sensitivity of the customer proprietary information held by the BIAS provider.

§ 64.7006 Breach notification.

(a) *Customer notification.* A BIAS provider must notify affected customers of covered breaches of customer PI no later than 10 days after the discovery of the breach, subject to law enforcement needs.

(1) A BIAS provider required to provide notification to a customer under this subsection may provide such notice by any of the following methods:

(i) Written notification, sent to the postal address of the customer provided by the customer for contacting that customer; or

(ii) Email or other electronic means using information provided by the customer for contacting that customer for data breach notification purposes.

(2) The customer notification required to be provided under this section must include:

(i) The date, estimated date, or estimated date range of the breach of security;

(ii) A description of the customer PI that was used, disclosed, or accessed, or reasonably believed to have been used, disclosed, or accessed, by a person without or exceeding authorization as a part of the breach of security;

(iii) Information that the customer can use to contact the BIAS provider to inquire about the breach of security and the customer PI that the BIAS provider maintains about that customer;

(iv) Information about how to contact the Federal Communications Commission and any state regulatory agencies relevant to the customer and the service; and

(v) Information about the national credit-reporting agencies and the steps customers can take to guard against identity theft, including any credit monitoring or reporting the telecommunications carrier is offering customers affected by the breach of security.

(3) If a federal law enforcement agency determines that the notification to customers required under this subsection would interfere with a criminal or national security investigation, such notification shall be delayed upon the written request of the law enforcement agency for any period which the law enforcement agency determines is reasonably necessary. A law enforcement agency may, by a subsequent written request, revoke such delay or extend the period set forth in the original request made under this paragraph by a subsequent request if the law enforcement agency determines that further delay is necessary.

(b) *Commission notification.* A BIAS provider must notify the Federal Communications Commission of any breach of customer PI no later than seven days after discovering such breach. Such notification shall be made electronically by means of a reporting system that the Commission makes available on its Web site.

(c) *Federal law enforcement notification.* A BIAS provider must notify the Federal Bureau of Investigation (FBI) and the U.S. Secret Service (Secret Service) whenever a breach is reasonably believed to have compromised the customer PI of more than 5,000 customers, no later than seven (7) days after discovery of the breach, and at least three (3) days before notification to the affected customers, whichever comes first. Such notification shall be made through a central reporting facility. The Commission will maintain a link to the reporting facility on its Web site.

(d) *Recordkeeping.* A BIAS provider must maintain a record of any breaches of security discovered and notifications made to customers, the Commission, the FBI, and the Secret Service pursuant to this section. The record must include, if available, dates of discovery and notification, a detailed description of the customer PI that was the subject of the breach, and the circumstances of the breach. BIAS providers shall retain such records for a minimum of 2 years.

§ 64.7007 Effect on state law.

The rules set forth in this subpart shall preempt state law only to the extent that such state laws are inconsistent with the rules set forth herein. The Commission shall determine whether a state law is preempted on a case-by-case basis, without the presumption that more restrictive state laws are preempted.

[FR Doc. 2016–08458 Filed 4–19–16; 8:45 am]

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FEDERAL REGISTER

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Part III

The President

Proclamation 9424—National Park Week, 2016
Executive Order 13725—Steps to Increase Competition and Better Inform Consumers and Workers to Support Continued Growth of the American Economy

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Title 3—

The President

Proclamation 9424 of April 15, 2016

National Park Week, 2016

By the President of the United States of America

A Proclamation

Our National Parks have allowed generations to discover history, nature, and wildlife in irreplaceable ways. From the highest peaks of Denali to the lowest dips of the Grand Canyon, families around our country enjoy the splendor of the outdoors. Throughout National Park Week, as we celebrate the ways in which our treasured outdoor spaces enrich our lives and uplift our spirits, the National Park Service will again offer free admission to America's National Parks so more people can explore our country's vast natural beauty.

National Parks provide unique opportunities to connect with one another and the world around us, and my Administration has encouraged more Americans to take advantage of these wonders. Through the "Find Your Park" campaign, we are helping more people visit public lands and landmarks—from State and local parks that capture our Nation's natural beauty to historical sites that offer unparalleled perspectives into our past. Whether breathtaking sceneries or rushing bodies of water, our National Parks have something for everyone—young and old—and I am committed to helping all Americans discover the outdoors and interact with our unique and magical landscapes.

Exposure to the outdoors can stimulate thought and inspiration, and my Administration has been working to provide more of our young people with the opportunity to grow to learn and love our National Parks. We launched the "Every Kid in a Park" initiative, giving all fourth grade students and their families free admission to our parks and other Federal lands and waters. Our parks are beloved parts of America, and ensuring their survival for generations to come is imperative, which is why I have acted to protect more public land and water than any President in history—more than 265 million acres—and I have called on the Congress to boost maintenance and modernization of our National Parks so our children and grandchildren will be able to enjoy their magnificence. And because we must protect the one and only planet we have, my Administration will continue working to combat climate change.

This week, in honor of the upcoming National Park Service (NPS) centennial and the rich heritage the NPS has helped protect, let us embrace the opportunity to participate in a variety of scientific, artistic, and athletic activities in our National Parks. And together, let us recommit to promoting environmental stewardship and conserving our public lands so all our daughters and sons can experience the grandeur of our outdoor spaces for years to come.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 16 through April 24, 2016, as National Park Week. I encourage all Americans to visit their National Parks and be reminded of these unique blessings we share as a Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of April, in the year of our Lord two thousand sixteen, and of the Independence of the United States of America the two hundred and fortieth.

[FR Doc. 2016–09342
Filed 4–19–16; 11:15 am]
Billing code 3295–F6–P

Presidential Documents

Executive Order 13725 of April 15, 2016

Steps to Increase Competition and Better Inform Consumers and Workers to Support Continued Growth of the American Economy

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to protect American consumers and workers and encourage competition in the U.S. economy, it is hereby ordered as follows:

Section 1. *Policy.* Maintaining, encouraging, and supporting a fair, efficient, and competitive marketplace is a cornerstone of the American economy. Consumers and workers need both competitive markets and information to make informed choices.

Certain business practices such as unlawful collusion, illegal bid rigging, price fixing, and wage setting, as well as anticompetitive exclusionary conduct and mergers stifle competition and erode the foundation of America's economic vitality. The immediate results of such conduct—higher prices and poorer service for customers, less innovation, fewer new businesses being launched, and reduced opportunities for workers—can impact Americans in every walk of life.

Competitive markets also help advance national priorities, such as the delivery of affordable health care, energy independence, and improved access to fast and affordable broadband. Competitive markets also promote economic growth, which creates opportunity for American workers and encourages entrepreneurs to start innovative companies that create jobs.

The Department of Justice (DOJ) and the Federal Trade Commission (FTC) have a proven record of detecting and stopping anticompetitive conduct and challenging mergers and acquisitions that threaten to consolidate markets and reduce competition.

Promoting competitive markets and ensuring that consumers and workers have access to the information needed to make informed choices must be a shared priority across the Federal Government. Executive departments and agencies can contribute to these goals through, among other things, pro-competitive rulemaking and regulations, and by eliminating regulations that create barriers to or limit competition. Such Government-wide action is essential to ensuring that consumers, workers, startups, small businesses, and farms reap the full benefits of competitive markets.

Sec. 2. *Agency Responsibilities.* (a) Executive departments and agencies with authorities that could be used to enhance competition (agencies) shall, where consistent with other laws, use those authorities to promote competition, arm consumers and workers with the information they need to make informed choices, and eliminate regulations that restrict competition without corresponding benefits to the American public.

(b) Agencies shall identify specific actions that they can take in their areas of responsibility to build upon efforts to detect abuses such as price fixing, anticompetitive behavior in labor and other input markets, exclusionary conduct, and blocking access to critical resources that are needed for competitive entry. Behaviors that appear to violate our antitrust laws should be referred to antitrust enforcers at DOJ and the FTC. Such a referral shall not preclude further action by the referring agency against that behavior under that agency's relevant statutory authority.

(c) Agencies shall also identify specific actions that they can take in their areas of responsibility to address undue burdens on competition. As permitted by law, agencies shall consult with other interested parties to identify ways that the agency can promote competition through pro-competitive rulemaking and regulations, by providing consumers and workers with information they need to make informed choices, and by eliminating regulations that restrict competition without corresponding benefits to the American public.

(d) Not later than 30 days from the date of this order, agencies shall submit to the Director of the National Economic Council an initial list of (1) actions each agency can potentially take to promote more competitive markets; (2) any specific practices, such as blocking access to critical resources, that potentially restrict meaningful consumer or worker choice or unduly stifle new market entrants, along with any actions the agency can potentially take to address those practices; and (3) any relevant authorities and tools potentially available to enhance competition or make information more widely available for consumers and workers.

(e) Not later than 60 days from the date of this order, agencies shall report to the President, through the Director of the National Economic Council, recommendations on agency-specific actions that eliminate barriers to competition, promote greater competition, and improve consumer access to information needed to make informed purchasing decisions. Such recommendations shall include a list of priority actions, including rulemakings, as well as timelines for completing those actions.

(f) Subsequently, agencies shall report semi-annually to the President, through the Director of the National Economic Council, on additional actions that they plan to undertake to promote greater competition.

(g) Sections 2(d), 2(e), and 2(f) of this order do not require reporting of information related to law enforcement policy and activities.

Sec. 3. *General Provisions.* (a) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) Independent agencies are strongly encouraged to comply with the requirements of this order.

(c) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
April 15, 2016.

[FR Doc. 2016–09346
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